

**STATE OF MINNESOTA
IN COURT OF APPEALS**
Appellate Court Case No. C4-98-179

State of Minnesota,

Respondent,

vs.

Thomas Christopher
Wright,

Appellant.

APPELLANT'S BRIEF AND APPENDIX

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STATEMENT OF ISSUE

Is Minn. Stat. Sec. 152.03, Subd. 1(5) unconstitutional as applied to an alleged sale of marijuana grown upon Appellant's own home and garden, as a violation of Article 13, Sec. 7 of the Minnesota Constitution?

The trial court held in the negative.

STATEMENT OF THE CASE

On or about November 1, 1996, Appellant in the above-entitled matter was charged by formal complaint, a copy of which is set forth in Appellant's Appendix at A.1-A.4, with a single count of third degree sale of marijuana, in violation of Minn. Stat. Sec. 152.023, Subd. 1(5), and Subd. 3(a).

On December 10, 1997, Appellant brought a written motion to dismiss the complaint, inter alia, on the ground that the statute under which Appellant was charged was unconstitutional as applied, in violation of Article 13, Sec. 7 of the Minnesota Constitution.¹

On January 28, 1997, Appellant's motion was orally denied from the bench. The Honorable Patrick Fitzgerald presiding.²

On April 3, 1997, Appellant renewed the motion to dismiss, based solely on state constitutional grounds, to be heard

¹A copy of Appellant's original motion to dismiss is set forth in Appellant's Appendix at A.5-A.7.

²Since Judge Fitzgerald simply denied the motions from the bench, without setting forth reasons therefor, no transcript of Judge Fitzgerald's denial was ordered or made part of the record.

immediately prior to trial.³

The motion was heard on May 7, 1997, before the Honorable Allen Oleisky, Judge of Hennepin County District Court.

On August 7, 1997, Judge Oleisky issued an order and memorandum, a copy of which is set forth in Appellant's Appendix at A.92-A.98, denying the renewed motion to dismiss.

On October 29, 1997, the matter was tried, without a jury, upon stipulated facts before the Hennepin County District Court, the Honorable Robert H. Lynn, presiding. Based upon the stipulated facts, Appellant was found guilty of the offense charged, expressly reserving his right to seek appellate review of his constitutional challenge (T.5).

From the judgment of conviction entered pursuant to Judge Lynn's findings, Appellant took the present appeal.⁴

STATEMENT OF FACTS

Appellant in the above-entitled matter was charged with a single count of controlled substance crime in the third degree, in violation of Minn. Stat. Sec. 152.023, Subd. 1(5), which provides as follows:

"A person is guilty of a controlled substance crime in the third degree if:

(5) The person unlawfully sells one or more mixtures of

³Appellant's renewed motion to dismiss, together with the documents in support thereof are set forth in Appellant's Appendix at A.8-A.91.

⁴Appellant's Notice of Appeal is set forth in Appellant's Appendix at A.99.

a total weight of five kilograms or more containing marijuana or Tetrahydrocannabinol.

The terms "sell" is defined in Sec. 152.01, Subd. 1(5)a as follows:

"Sell means:

(1) To sell, give away, barter, deliver, exchange, distribute or dispose of to another, or to manufacture; or

(2) to offer or agree to perform an act listed in Clause (1); or

(3) To possess with an intent to perform an act listed in Clause (1)."

The term "marijuana" is defined in Sec. 152.01 Subd. 9 as follows:

"'Marijuana' means all parts of the plant of any species of the genus cannabis, including all agronomical varieties, whether growing or not; the seeds thereof, the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber from such manufacture, salt, derivative, mixture or preparation of such mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination."

The facts alleged in the complaint to support a finding of probable cause to believe that an offense has been committed and that Appellant committed the offense are the following:

"Your complainant, Jonathan Beecham, is a police officer for the Minneapolis Police Department. As part of his investigation, he has reviewed the relevant police reports and laboratory analysis and believes the following to be true:

That on August 16, 1996, your complainant, along with other officers, executed a search warrant at 3100 Thomas

Avenue North, in Minneapolis, Hennepin County, Minnesota, the residence of KATHLEEN MARY WRIGHT and THOMAS CHRISTOPHER WRIGHT, Defendant herein, a warrant having been signed by the Honorable Steven Lange. KATHLEEN WRIGHT was present when the search warrant was executed. Officers observed a show room in the upstairs bedroom and recovered 41 plants of suspected marijuana, numerous plants drying, and numerous containers of harvested suspected marijuana buds. In the kitchen of the residence,. Officers recovered a scale and a container with suspected handgun and a baggy of suspected marijuana. Officers recovered drug paraphernalia throughout the residence. Also recovered were numerous mailing to Defendant listing the address of the residence.

Your complainant states that the suspected drugs were delivered to Minneapolis City Chemist Bruce Person whose testing proved positive for marijuana weighing over five kilograms."

Based upon these allegations, the criminal complaint alleges the following:

"That on or about August 16, 1996, in Hennepin County, Minnesota, KATHLEEN MARY WRIGHT and THOMAS CHRISTOPHER WRIGHT, intentionally aiding, advising, hiring, counseling, or conspiring with each other, unlawfully sold, gave away, bartered, delivered, exchanged, distributed, disposed to another, offered to sell, agreed to sell, manufactured or possessed with intent to sell one or more mixtures of a total weight of five kilograms or more containing marijuana or Tetrahydrocannabinol." Appellant's Appendix at A.1-A.2.

In Appellant's original motion to dismiss the criminal complaint in the above-entitled matter, Appellant argued that, to the extent the statute under which Appellant is charged prohibits the sale of marijuana grown by Appellant in a farm or garden cultivated by him, the statute is unconstitutional, under Article 13, Sec. 7 of the Minnesota Constitution, which provides as

follows:

"Any person may sell or peddle the products of a farm or garden occupied and cultivated by him without obtaining a license therefor."

The District Court, by the Honorable Patrick Fitzgerald, orally denied said motion to dismiss, without comment, at the time of the probable cause hearing.

In his renewed motion to dismiss the complaint, Appellant raised two additional facts:

The first is that, at the time current Article 13, Sec. 7 was added to the Minnesota Constitution, there was no legal prohibition against either the possession or sale of marijuana. Article 13, Sec. 7 was added to the Minnesota Constitution by constitutional amendment on November 6, 1906. The first legal prohibition against the possession or sale of marijuana was enacted by the Minnesota Legislature until April 29, 1935, nearly 30 years later. As a result, at the time Article 13, Sec. 7 was added to the Minnesota Constitution, marijuana was as legal an agricultural product as wheat, corn, and soybeans.⁵

Secondly, as Appellant's Affidavits and Exhibits indicate, at the time Article 13, Sec. 7 was added to the Minnesota Constitution, marijuana, in the form of hemp plant, was not only lawful, but widely cultivated and sold within the State of

⁵See Affidavit of Randall D.B. Tigue, Appellant's Appendix at A.10-A.11. See also Session Laws of Minnesota for 1935, Chapter 321, a copy of which is set forth in Appellant's Appendix at A.12-A.13.

Minnesota. For example, the 12th Census of the United States (1900) reveals, as of June 1, 1850, Schedule 4, the production of 73 tons of hemp, 111 tons of hemp as of June 1, 1860, and 50 tons of hemp as of June of 1870, Appellant's Appendix at A.18-A.20. Schedule 2 of June 1, 1880 indicates the production of 68 tons of hemp consuming 67 acres of land. Id. at A.20-A.21.

The United States Census of Agriculture for Minnesota (1920) reveals the existence of 20 hemp farms in 1919, harvesting 293 acres and producing 195,119 pounds of hemp. Id. at A.31. The 1905 Annual Report for the Department of Agriculture, at pp. 145-146, relating to hemp states:

"Increased areas have been sown this year in Michigan, Minnesota and Nebraska, but nearly all of the hemp produced in this country is still grown in Central Kentucky, where methods of retting and preparing the fiber are best known." Id. at A.38.

The same report from the following year, 1906 at pp. 211-212 notes:

"The increasing cultivation of hemp in Nebraska, Minnesota, California and Oregon, partly as the result of the introduction of a successful hemp brake, is developing an increasing demand for hemp seed of good quality." Id. at A.41-A.42.

Likewise, the Report of the House Committee to Investigate Growing Flax and Hemp in Minnesota (1891) contains the following statement by J. Carmichael Allen, General Superintendent of Minneapolis Linen Mills to State Representative Charles M. Bell:

"With regard to hemp, this fibrous plant ought to be raised to advantage in this state. The soil is favorable

in nearly every vacant lot in Minneapolis and St. Paul shows a luxuriant crop of the plant growing wild, without cultivation, and I have personally cut a stem 15 feet high in Minneapolis." Id. at A. 71.

The same report reveals a statement by one J.T. Smith to Representative Bell as follows:

"I have been growing flax seed and fiber in Minneapolis for ten years past; commenced in 1881. I also sowed and planted 40 acres of hemp in 1882 with very good results...

I grew 500 acres of hemp last year and I expect to grow 800 acres for fiber this year.

Last year it was considered an experiment to grow hemp in this state, being the first grown for fiber on an extensive scale.

I hope this season to distribute a large amount of hemp seed among farmers around Heron Lake, taking their product in the fall to be worked at my mill." Id. at A.72-A.73.

The same report quotes on G.V. Smith in a statement to Representative Bell as follows:

"In my judgment the soil and climate of Minnesota and of the Northwest generally are admirably adapted for the production of flax, both for seed and fiber, and also for hemp...Experiments on a large scale on the production of hemp were also conducted near Heron Lake, MN, where 500 acres were planted with Kentucky seed, and the fiber was superior to that produced in Kentucky.

We have completed - and in practical operation in the City of Minneapolis - improved machines for threshing flax and hemp without the least injury to fiber." Id. at A.74.

The report concludes:

"We do not hesitate to say to each farmer in this state, 'grow flax; grow hemp; talk flax; talk hemp; study flax; study hemp; in small acreage it may be at first, but we

say, make a beginning , try it this year, and we will trust, if your do it, the results of the next few years for out vindication...To the young man who intends to make farming his life's work, we say, the growing and working in Minnesota of flax and hemp for fiber, when followed with care and intelligence is a line of industry well worthy of his studious attention...to him we repeat; talk flax and hemp; study flax and hemp; grow flax and hemp." Id. at 86.

ARGUMENT

I. TO THE EXTENT THAT MINNESOTA STATUTES SECTION 152.03, SUBD. 1(5) PROHIBITS THE SALE OF MARIJUANA GROWN IN A FARM OR GARDEN OCCUPIED AND CULTIVATED BY APPELLANT, THE STATUTE IS UNCONSTITUTIONAL AS APPLIED, IN VIOLATION OF ARTICLE 13, SECTION 7 OF THE MINNESOTA CONSTITUTION.

As already noted, supra, Appellant in the instant case is charged with "selling" marijuana entirely grown by him in his own home. Accordingly, it is clear that to the extent that Minn. Stat. Sec. 152.023, Subd. 1(5) applies to such conduct, the statute violates Article 13, Sec. 7 of the Minnesota Constitution which provides, "All persons may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor."

It is absolutely clear that the marijuana in question in the instant case constitutes "the products of a farm or garden occupied and cultivated" by Appellant within the meaning of Article 13, Sec. 7. This was made clear in the Op. Atty. Gen., 1939, No. 213, p. 263, in which the Ely City Attorney inquired as to whether the City of Ely could license farmers selling meat from animals raised by them on their own farms. In response thereto, the

Attorney General stated:

"Our Supreme Court has never passed upon the question, but if it were to do so I am inclined to view that it would hold that meat from animals and turkeys and chickens raised on land occupied by a farmer would be interpreted as 'products of the farm or garden' within the meaning of Article I, Sec. 18, above quoted.⁶ Under a statutory limitation that no city shall levy or collect any tax or license fee from any farmer for the sale of any 'produce' raised by him and sold from his wagon in such city, it has been held that a license cannot be imposed upon a farmer for selling from his wagon on the streets spareribs and sausages made from hogs raised and butchered by him on his farm. *Hibgee v. Bergin*, 97 Mo. App. 682, 201 S.W. 558. In that case the Court of Appeals of the District Court of Columbia which said with reference to the definition of the word 'produce':

'But the common parlance of the county, and the common practice of the county, has been to consider all those things as farming products or agricultural products which had the situs of their production upon the farm, and which were brought into condition for the uses of society by labor of those engaged in agricultural pursuits as contra-distinguished from manufacturing or other industrial pursuits.'"

By this definition, it is absolutely clear that any marijuana grown by Appellant in his home is the product of the labor of one engaged in agricultural pursuits as opposed to industrial pursuits. As such, it is plainly "produce" interpreted to be the equivalent of "products of a farm or garden" within the meaning of Article 13, Sec. 7.

Given the fact that Article 13, Sec. 7 bans the state from engaging in the lesser power of even requiring the license for the

⁶When originally adopted in 1906, the provision in question was codified as Article I, Sec. 18 of the Minnesota Constitution. When the Minnesota Constitution was rewritten in 1974, the provision became the current Article 13, Sec. 7

sale of such products, it certainly would bar the even greater power of the state to ban the sale of such products entirely.⁷ As a result, the state under which the Appellant is charged plainly violates the Minnesota Constitution and should be held unconstitutional as applied.

II. THE APPLICABILITY OF ARTICLE 13, SEC. 7 CANNOT BE AVOIDED MERELY BY LABELING MARIJUANA A "CONTROLLED SUBSTANCE."

Plainly, the clear applicability of Article 13, Sec. 7 to marijuana, as an agricultural product grown out of Appellant's home cannot be avoided merely by labeling marijuana a "controlled substance." Obviously, if marijuana were a controlled substance or otherwise illegal in the State of Minnesota at the time Article 13, Sec. 7 was adopted, the assertion that it is exempt from the provision's constitutional protections might have some merit.

However, as is pointed out in the documents set forth in Appellant's Appendix, that was plainly not the case. The constitutional amendment adopting Article 13, Sec. 7 was enacted on November 6, 1906, and marijuana was not made illegal in the State of Minnesota until April 29, 1935, nearly 30 years later. Appellant's Appendix at A.12-A.13. Thus, at the time Article 13, Sec. 7 was adopted, marijuana was every bit as legal a substance in the State of Minnesota as wheat, corn, oats, and soybeans.

⁷Certainly, if Article 13, Sec. 7 were to bar the state from prohibiting a farmer from selling his own corn without a license, it certainly would bar the state from prohibiting the farmer from selling his corn entirely.

Moreover, not only was marijuana lawful, but it was in fact a crop cultivated, harvested and sold within the state. The Agricultural Census Data attached to Appellant's affidavit plainly indicates the extent to which the crop was cultivated and sold. Moreover, in 1891, a Committee in Minnesota Legislature was publicly urging the growing and harvesting of the hemp plant in the State of Minnesota. Plainly as of November 6, 1906, when Minnesota extended constitutional protection to the right of a person to sell or peddle the products of a farm or garden occupied and cultivated by him, the hemp plant, or marijuana, plainly fell within that constitutional protection.

Plainly, if the legislature in 1935 or in subsequent years wished to remove marijuana from the rubric of that constitutional protection, it could do so only by constitutional amendment, and not be simple legislation.

The District Court's reasons for rejecting this rationale are unpersuasive at best.

First of all, the District Court asserted that the right to prohibit the sale of marijuana is clearly within the state's police power, citing *State v. Hanson*, 364 N.W. 2d 786 (Minn. 1985), upholding the classification of marijuana as a Schedule I controlled substance. In so doing, the trial court relied upon the language of the United States Court of Appeals for the Eighth Circuit in *United States v. Fogarty*, 692 F. 2d 542 (8th Cir. 1982),

cert. denied, 460 U.S. 1040, 103 S. Ct. 1434, 75 L. Ed. 2d 792 (1983), stating:

"Because there is no fundamental constitutional to import, sell, or possess marijuana, the legislative classification complained of here must be upheld unless it bares no rational relationship to a legitimate government purpose." Cited in *Hanson*, 364 N.W. 2d at 790.

The argument begs the question. Appellant's argument is not that the classification of marijuana as a Schedule I controlled substance is unconstitutional because it exceeds the police power in that it bears no rational relationship to a legitimate governmental objective; it is that such an inquiry is irrelevant for an Article 13, Sec. 7 analysis. Even conceding that banning marijuana would be within the police power in that it bore a rational relationship to a legitimate governmental purpose, the same could be said for banning the sale of red meat, eggs, and corn, or at least in subjecting the sale of all of those items to a reasonable licensure requirement. However, a prohibition of the sale of home-grown meat, eggs, or corn is unconstitutional in Minnesota, not because such prohibition or licensure requirements bear no relationship to a legitimate governmental purpose, and therefore are beyond the police power; rather such requirements are unconstitutional in Minnesota because Article 13, Sec. 7 absolutely bans such requirements, regardless of whether they bear a rational relationship to an otherwise legitimate governmental purpose. Article 13, Sec. 7 deliberately withdraws the ability to pass such

regulations from the state's police power.

As a result, if the state wishes to exercise its police power to ban or license the sale of home-grown marijuana, in order to do so, it must do the same thing it would have to do if it were to license or prohibit the sale of home-grown meat, eggs, or corn, to-wit: it must amend Article 13, Sec. 7 of the Minnesota Constitution in order to restore such regulatory ability to the state's police power. When the state, in 1935, prohibited the sale of marijuana, an absolutely lawful substance prior to that date, in order to exempt marijuana from the protection of Article 13, Sec. 7, it could prohibit the sale of home-grown marijuana, only by constitutional amendment and not by statute.

Equally unpersuasive is the trial court's second reason for rejecting Appellant's argument below, the argument that because the agricultural records reflect hemp as being grown for the fiber in its stalks, not for the THC in its leaves and seeds, that only the stalks of the hemp plant fall within the protection of Article 13, Sec. 7.⁸

There are two obvious problems with such an argument. First of all, until marijuana was outlawed by the State Legislature in 1935, possession, sale and distribution of the entire hemp plant,

⁸See Appellant's Appendix at A.96-A.97. The trial court also relies upon the definition of marijuana contained in Minn. Stat. Sec. 152.01, Subd. 9, exempting therefrom "the mature stalks of such plant, fiber from such stalks, oil or cake made from the seeds of such plant..." See *Id.* at 97.

leaves, seeds, and THC included were all perfectly lawful and all fell within the definition of "the products of a farm or garden" within the meaning of Article 13, Sec. 7.

Secondly, the fact that the turn-of-the century agricultural product reports dealt primarily with the use of hemp fiber from the stalk of the plant for rope, twine, paper and the like hardly means that between 1906, when Article 13, Sec. 7 of the Minnesota Constitution was adopted, until 1935, when the sale of marijuana was outlawed, that marijuana was not a common use of the hemp plant. What historical records exist on the subject plainly reveal that the use of the hemp plant for smoking and pharmacological purposes long preceded the adoption of Article 13, Sec. 7 of the Minnesota Constitution. For example, in Sloman The History of Marijuana in America (Bobbs Merrill Co., Inc. 1979), the following historical discussion is set forth:

"From 1629, when it was introduced in New England, until the invention of the cotton gin and similar machinery, hemp was a major crop in the United States. As its utility for clothing and the like diminished, the resilient marijuana plant appeared in a new form - as medicine for a wide variety of ailments. It was first recognized in 1850 by the United States Pharmacopeia, the highly selective drug reference manual. In 1851 the United States Dispensatory, a less rigorous listing, recommended cannabis for a wide variety of disorders:

'Extract of hemp is a powerful narcotic (used here to indicate sleep producing substance) causing exhilaration, intoxication, delirious hallucinations, and, in its subsequent action, drowsiness and stupor, with little effect upon the circulation. It is asserted also to act as a decided aphrodisiac, to increase the appetite and occasionally to induce the cataleptic state. In morbid

states of the system, it has been found to cause sleep, to allay spasm, to compose nervous disquietude, and to relieve pain. In these respects, it resembles opium; but it differs from that narcotic in not diminishing the appetite, checking secretions, or constipating the bowels. It is much less certain in its effects, but may sometimes be preferably employed, when opium is contraindicated by its nauseating or constipating effects, or its disposition to produce headache, and to check the bronchial section. The complaints in which it has been specially recommended on neuralgia, doubt, rheumatism, tetanus, hydrophobia, epidemic cholera, convulsions, chorea, hysteria, mental depression, delirium tremens, insanity, and uterine hemorrhage.'

Quite and impressive array. In fact, tincture of cannabis was produced by the leading pharmaceutical companies in the later 1800s, including Parke-Davis, Lilly and Squibb. A German firm even marketed cannabis cigarettes in combating asthma. The cigarettes also contained belladonna, and the more aware patients in the population rushed to their general practitioners, studied in the art of the wheeze.

In fact, for the early immigrants to the United States from Eastern Europe, cannabis has traditionally played a major role in their folklore for centuries. In the fifth century BC., Greek historian Herodotus observed that Scythians would hurl hemp seeds on the heated stones and then inhale the vapor to become intoxicated. This ritual would occur after a Scythian had died, and seems to presage the Irish wake." Id. at 22.

Concerning use of marijuana in the United States in the time period immediately preceding the adoption of Article 13, Sec. 7, Sloman writes:

"In 1876 the Turkish display of the Philadelphia Exposition future hash smoking, and by 1885 clandestine hashish clubs catering to a well-heeled clientele composed of writers, artists, doctors and society matrons had been established in every major American city from New York to San Francisco."

In 1883 H.Kane, writing anonymously in a November issue of Harper's Monthly, gave a lurid description of a

Hashish House in New York." Id. at 26.

Consequently, not only was marijuana legal in 1906, when Article 13, Sec. 7 is adopted, the historical evidence quite clearly indicates that marijuana, as such, was being consumed throughout the United States.

III. THE ARGUMENT THAT ARTICLE 13, SEC. 7 DOES NOT PROTECT AGAINST AN ABSOLUTE BAN ON THE SALE OF MARIJUANA, ONLY AGAINST ITS LICENSURE, IS LACKING IN MERIT.

Although the trial court did not rely on such argument, Respondent argued below that Article 13, Sec. 7 does not prohibit the state from enacting an absolute ban on the sale of home-grown marijuana, only from subjecting it to licensure requirements. The argument is transparently without merit for at least two reasons:

The first is that if the constitutional provision prohibits the state from asserting the lesser power of requiring a license for the sale of home grown marijuana, it certainly prohibits the greater power of banning the sale of the product altogether. Certainly, no one could make a serious argument that the state could, consistent with Article 13, Sec. 7, absolutely prohibit the sale of home grown corn, wheat, or soybeans within the state. It can do no more with marijuana, which was every bit as legal a product in 1906, when Article 13, Sec. 7 was adopted.

Secondly, and more importantly, it should be noted that, while the statute under which Appellant is charged is an absolute prohibition against the sale of marijuana, the overall regulatory

scheme adopted by the state is one of licensure. For example, Minn. Stat. Sec. 297D.08 imposes a controlled substances tax on unlawfully possessed marijuana. However, Sec. 297D.06 contains the following exemption:

"Nothing in this chapter requires persons registered under Chapter 151 or otherwise lawfully in possession of marijuana and a controlled substance to pay the tax required by this Chapter."

The reference is to Minn. Stat. Sec. 151.25, which provides as follows:

"The Board [of pharmacy] shall require and provide for the annual registration of every person engaged in the manufacturing or selling at wholesale drugs, medicines, chemicals, or poisons for medicinal purposes, now or hereafter doing business with accounts in this state. Upon a payment of a fee as set by the board, the board shall issue a registration certificate in such form as it may proscribe to such manufacturer or wholesaler. Such registration certificate shall be displayed in the conspicuous place in such manufacturer's or wholesaler's place of business for which it is issued and expire on the date set by the board. It shall be unlawful for any person to manufacture or sell at wholesale drugs, medicines, chemicals or poisons for medicinal purposes unless such a certificate has been issued to the person by the board. It shall be unlawful for any person engaged in the manufacture or selling at wholesale, or the person's agent, to sell legend drugs to other than pharmacy, except as provided by this Chapter.

Likewise, Minn. Stat. Sec. 152.21 specifically authorizes distribution of marijuana in the course of a clinical investigation as to its therapeutic processes, and exempts those licensed thereunder from criminal sanctions.

Consequently, rather than being an absolute prohibition against the distribution of marijuana, the Minnesota regulatory

scheme is one of licensure. Individuals are prohibited from distributing marijuana unless they are registered with the State Board of Pharmacy to do so, or licensed to conduct a research project to study the therapeutic properties of marijuana. What is in effect is not an absolute prohibition, but a prohibition unless one has the appropriate license, precisely what Article 13, Sec. 7 was intended to prohibit.

Finally, it should be noted that if the District Court's argument is adopted and, Article 13, Sec. 7 notwithstanding, the state had the authority to ban or subject to licensure by mere legislation alone, any farm or garden product it finds poses a threat to public health, safety and welfare, then Article 13, Sec. 7 would be rendered meaningless. There is absolutely no product of a farm or garden about which a public health or safety argument could not be raised. For example, meat, dairy products, and eggs, plainly held by the Attorney Generals' opinion to fall within the protection of Article 13, Sec. 7, all contained cholesterol and arguably pose a health threat. Virtually all grains, fruits and vegetables, can be fermented or distilled into alcohol, which also poses a public health threat.

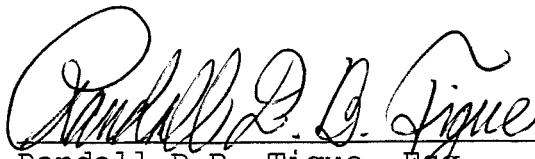
Plainly, the only way that Article 13, Sec. 7 can have any meaning at all is for the court to require that if exceptions are to be made to the scope of its coverage, those exceptions must be made by constitutional amendment and not by legislation.

CONCLUSION

For all of the foregoing reasons, Appellant's conviction should be reversed and the criminal charged against him dismissed, on the ground that the statute under which he was charged is unconstitutional as applied to home-grown marijuana, under Article 13, Sec. 7 of the Minnesota Constitution.

Respectfully submitted,

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A handwritten signature in cursive script, reading "Randall D.B. Tigue", written over a horizontal line.

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Dated: June 17, 1998

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State of Minnesota County of HENNEPIN District Court

CCT 1 LIST CHARGE STATUTE ONLY M.O.C. GOC
\$152.023,1(5),3(2) DF240 X

FILED
96 NOV -1 PM 3:23

HENNEPIN CO. DISTRICT
COURT ADMINISTRATOR

CTY. ATTY. FILE #	CONTROL AGENCY	CONTROL #
96-3749	0271100	96232780
COURT FILE #		DATE RECEIVED

Amended Tab Charge Previously Filed

SERIOUS FELONY
FELONY
GROSS MISDM DWI
GROSS MISDM
SUMMONS
WARRANT
ORDER OF DETENTION

State of Minnesota

PLAINTIFF,

VS.

NAME: first, middle, last

KATHLEEN MARY WRIGHT 96070388

THOMAS CHRISTOPHER WRIGHT 96075200

3100 Thomas Avenue No.

Minneapolis, MN 55411

Date of Birth

05/06/60

10/14/57

SJIS COMPLAINT NUMBER

27-11-X-246229

27-11-0-246230

DEFENDANTS.

COMPLAINT

The Complainant, being duly sworn, makes complaint to the above-named Court and states that there is probable cause to believe that the Defendants committed the following offense (s). The Complainant states that the following facts establish PROBABLE CAUSE:

Your complainant, Jonathan Beecham, is a police officer for the Minneapolis Police Department. As part of his investigation, he has reviewed the relevant police reports and laboratory analysis and believes the following to be true:

That on August 16, 1996, your complainant, along with other officers, executed a search warrant at 3100 Thomas Avenue North, in Minneapolis, Hennepin County, Minnesota, the residence of KATHLEEN MARY WRIGHT AND THOMAS CHRISTOPHER WRIGHT, defendants herein, the warrant having been signed by the Honorable Steven Lange. Defendant KATHLEEN WRIGHT was present when the search warrant was executed. Officers observed a grow room in the upstairs bedroom and recovered 41 plants of suspected marijuana, numerous plants drying and numerous containers of harvested suspected marijuana buds. In the kitchen of the residence, officers recovered a scale and a container with suspected marijuana. In the basement of the residence, officers recovered a loaded handgun and a baggie of suspected marijuana. Officers recovered drug paraphernalia throughout the residence. Also recovered were numerous mailings to both defendants listing the address of the residence.

A.1

Your complainant states that the suspected drugs were delivered to Minneapolis City Chemist Bruce Person whose testing proved positive for marijuana weighing over 5 kilograms.

Defendants are not presently in custody.

OFFENSE

CONTROLLED SUBSTANCE CRIME THIRD DEGREE-SALE (FELONY)
MINN. STAT. 1996, §152.023, SUBD. 1(5), SUBD. 3(a); §609.101,
SUBD. 3
PENALTY: 0-20 YEARS AND/OR \$75,000-\$250,000

That on or about August 16, 1996 in Hennepin County, Minnesota, KATHLEEN MARY WRIGHT and THOMAS CHRISTOPHER WRIGHT, intentionally aiding, advising, hiring, counseling, or conspiring with each other, unlawfully, sold, gave away, bartered, delivered, exchanged, distributed, disposed of to another, offered to sell, agreed to sell, manufactured or possessed with intent to sell one or more mixtures of a total weight of five kilograms or more containing marijuana or Tetrahydrocannabinols.

THEREFORE, Complainant requests that said Defendant, subject to bail or conditions of release by:
(1) arrested or that other lawful steps be taken to obtain defendant's appearance in court, or
(2) detained, if already in custody, pending further proceedings
and that said Defendant otherwise be dealt with according to law.

COMPLAINANT'S NAME:
JONATHAN BEECHAM

COMPLAINANT'S SIGNATURE:

DATE:
09/30/96

PROSECUTING ATTORNEY:

NAME/TITLE:
GRETCHEN GRAY-LARSON - mm
ASSISTANT COUNTY ATTORNEY
FORM I-2

PROSECUTING ATTORNEY'S SIGNATURE:

ADDRESS/TELEPHONE:

C2100 GOVERNMENT CENTER
348-8196/224984

Court Case #:

This COMPLAINT was subscribed and sworn to before the undersigned this day of

NAME:

TITLE:

SIGNATURE:

/S/ PATRICIA L. BELOIS
11-1-96

FINDING OF PROBABLE CAUSE

JUDGE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant (s) arrest or other lawful steps be taken to obtain Defendant (s) appearance in Court, or Defendant (s) detention, if already in custody, pending further proceedings. The defendant (s) is/are thereof charged with the above-stated offense.

SUMMONS

THEREFORE You, THE ABOVE-NAMED DEFENDANT(S), ARE HEREBY SUMMONED to appear on the day of 1996 at AM/PM before the above-named court at to answer this complaint.

IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.

WARRANT

EXECUTE IN MINNESOTA ONLY

To the Sheriff of the above-named county or other person authorized to execute this WARRANT, I hereby order, in the name of the State of Minnesota, that the above-named Defendant (s) be apprehended and arrested without delay and brought promptly before the above-named Court (in session, and if not, before a Judge or Judicial Officer of such Court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon thereafter as such Judge or Judicial Officer is available) to be dealt with according to law.

ORDER OF DETENTION

Since the above-named Defendant (s) is/are already in custody, I hereby order, subject to bail or conditions of release, that the above-named Defendant (s) continue to be detained pending further proceedings.

Bail: \$5,000

Conditions of Release:

No bail required if defendants voluntarily appear in court on above noted date and time

This COMPLAINT, SUMMONS, WARRANT, ORDER OF DETENTION, duly subscribed and sworn to, is issued by the undersigned Judicial Officer this day of

NAME: PATRICIA L. BELOIS
TITLE: Judge of District Court

SIGNATURE:

/S/ PATRICIA L. BELOIS
11-1-96

From testimony has been given before the Judicial Officer by the following witnesses:

STATE OF MINNESOTA COUNTY of

HENNEPIN

State of Minnesota

Plaintiff,

vs.

THOMAS CHRISTOPHER WRIGHT,
KATHLEEN MARY WRIGHT,

Defendant (s)

Clerk's Signature or File Stamp:

RETURN OF SERVICE

I hereby Certify and Return that I have served a copy of this COMPLAINT - SUMMONS, WARRANT, ORDER OF DETENTION upon the Defendant (s) herein-named.

Signature of Authorized Service Agent:

A.3

SUMMONS

YOU ARE HEREBY SUMMONED TO APPEAR on the 27th day of December 19 96 at 9:00 o'clock A.M. before the Court at HENN, CO. GOVT. CTR, 300 S. 6TH ST, MPLS.; ROOM# 1456C to answer this complaint.

IF YOU FAIL TO APPEAR in response to this Summons, a warrant for your arrest will be issued.

[Signature]
COURT DEPUTY
HENNEPIN COUNTY DISTRICT COURT

NOTICE TO NAMED PARTY ON COMPLAINT:

If you wish to interview for the services of the public defender, fill out the enclosed financial affidavit and bring it with you to court.

You will be detained after your court appearance for fingerprinting and photograph at the Adult Detention Center. You may not finish this process until late in the afternoon, you must make arrangements prior to your court appearance with: child care, work, school, transportation, etc... Please note: DO NOT BRING CHILDREN TO COURT, THEY ARE NOT ALLOWED IN THE Adult Detention Center. Do not bring a purse, briefcase or any excess property and minimize your jewelry. Bring your complaint and picture I.D. with you to court.

Thank you for your cooperation.

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

Thomas Christopher Wright,

Defendant.

MOTION TO DISMISS
CRIMINAL COMPLAINT

Case No. 96075200

The above-named Defendant, by the undersigned, hereby moves this Court for an Order, pursuant to Rules 10 and 17 of the Minnesota Rules of Criminal Procedure, dismissing the criminal complaint against him on the following grounds:

I. To the extent that Minnesota Statutes Section 152.03, Subd. 1(5) prohibits the sale of marijuana from a farm or garden occupied and cultivated by Defendant, the statute is unconstitutional as applied, in violation of Article 13, Section 7 of the Minnesota Constitution.

II. The complaint is duplicitous and fails to protect Defendant against double jeopardy, in violation of this rights under the Fifth and Fourteenth Amendments to the United States Constitution.

III. Even if the statute under which Defendant is charged were constitutional, the complaint, as supplemented by the record as a whole, fails to establish probable cause to believe that an offense has been committed or that Defendant committed the offense.

In the alternative, Defendant moves for an evidentiary hearing, pursuant to State v.

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STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

Thomas Christopher Wright,

Defendant.

NOTICE OF MOTION

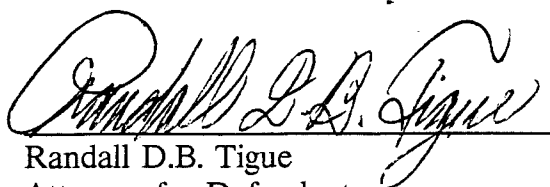
Case No. 96075200

TO: The above-named Plaintiff, and Ms. Gretchen Gray-Larson, Assistant County Attorney, C-2100 Hennepin County Government Center, Minneapolis, Minnesota, its attorney:

PLEASE TAKE NOTICE that the above-named Defendant, by the undersigned, will bring the attached motion for hearing before the Probable Cause Calendar Judge in his or her courtroom in the Hennepin County Government Center, Minneapolis, Minnesota, on January 28, 1997, at 2:00 p.m., or as soon thereafter as counsel can be heard.

RANDALL TIGUE LAW OFFICE, P.A.

BY:



Randall D.B. Tigue
Attorney for Defendant
2620 Nicollet Avenue
Minneapolis, MN 55408
(612) 874-9903
Att. Id. No. 110000

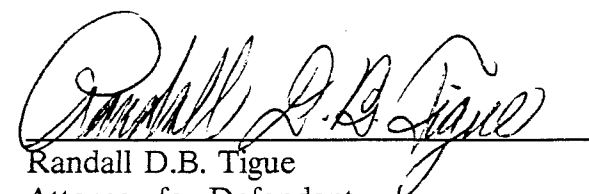
Dated: January 10, 1997.

Florence, 306 Minn. 442, 239 N.W. 2d 892 (1976), to determine whether probable cause exists pursuant to the statute under which he is charged.

The foregoing motion shall be based upon the criminal complaint in the above-entitled matter, upon the attached affidavit and exhibits, upon the attached memorandum of law, and upon all of the files, records and proceedings herein.

RANDALL TIGUE LAW OFFICE, P.A.

BY:



Randall D.B. Tigue
Attorney for Defendant
2620 Nicollet Avenue
Minneapolis, MN 55408
(612) 874-9903
Att. Id. No. 110000

Dated: January 10, 1997.

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STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

NOTICE OF MOTION

Court File No. 96075200

Thomas Christopher Wright,

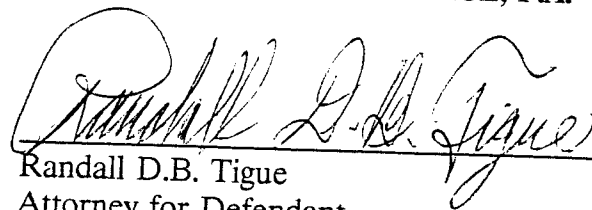
Defendant.

TO: The above-named Plaintiff, and Mrs. Gretchen Gray-Larson, Assistant County Attorney, C-2100 Hennepin County Government Center, Minneapolis, Minnesota 55487, its attorney:

PLEASE TAKE NOTICE that the above-named Defendant, by the undersigned, will bring the attached motion for hearing immediately prior to trial in the above-entitled matter.

RANDALL TIGUE LAW OFFICE, P.A.

BY:



Randall D.B. Tigue
Attorney for Defendant
2620 Nicollet Avenue
Minneapolis, MN 55408
(612) 874-9903
Att. Id. No. 110000

Dated: April 3, 1997.

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

**RENEWED MOTION TO
DISMISS CRIMINAL
COMPLAINT**

Court File No. 96075200

Thomas Christopher Wright,

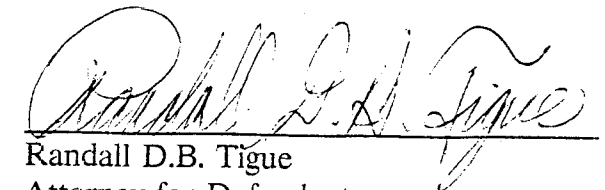
Defendant.

The above-named Defendant, by the undersigned, hereby renews his motion to dismiss the criminal complaint in the above-entitled matter in that, to the extent that Minnesota Statutes Section 152.03, Subd. 1(5) prohibits the sale of marijuana from a garden or farm or garden occupied and cultivated by Defendant, the statute is unconstitutional as applied in violation of Article 13, Section 7 of the Minnesota Constitution.

The foregoing renewed motion shall be based upon the attached affidavit and exhibits, upon the attached memorandum of law, and upon all of the files, records and proceedings herein.

RANDALL TIGUE LAW OFFICE, P.A.

BY:



Randall D.B. Tigue
Attorney for Defendant
2620 Nicollet Avenue
Minneapolis, MN 55408
(612) 874-9903
Att. Id. No. 110000

Dated: April 3, 1997

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STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

Thomas Christopher Wright,

Defendant.

AFFIDAVIT OF
RANDALL D.B. TIGUE

Court File No. 96075200

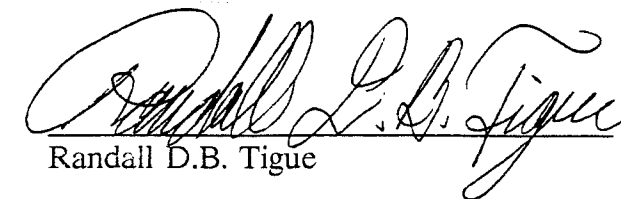
STATE OF MINNESOTA)
)ss
COUNTY OF HENNEPIN)

Randall D.B. Tigue, being first duly sworn on oath, hereby deposes and says the following:

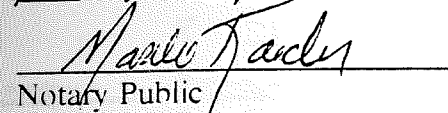
1. Your affiant is the attorney for Defendant in the above-entitled matter.
2. Your affiant has researched the legislative history of the current legal prohibitions against the possession and sale of marijuana to determine the legal status of marijuana as November 6, 1906, when current Article 13, Section 7 was added to the Minnesota Constitution.
3. Your affiant has examined the legislative history of Minnesota Statutes Sections 618.01-618.25, the Uniform Narcotic Drug Act, which was repealed in 1971 and replaced by the current Chapter 152 of Minnesota Statutes.
4. An examination of the legislative history of the Uniform Narcotic Drug Act reveals that the first occasion in which a prohibition of marijuana appears in Minnesota law was in Laws of Minnesota, 1935, Chapter 321, enacted and signed into law on April 29, 1935.

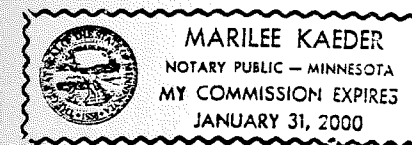
A copy of said enactment is attached hereto as Exhibit A and incorporated by reference as fully set forth herein.

5. As a result, it is clear that on November 6, 1906, when Article 13, Section 7 was added to the Minnesota Constitution, marijuana was as legal an agricultural commodity as were corn, oats, and soybeans.


Randall D.B. Tigue

Sworn to and subscribed before me this
4th day of April, 1997.


Notary Public



Be it enacted by the Legislature of the State of Minnesota:

Section 1. Possession of certain drugs prohibited.—No person shall in the state of Minnesota produce or possess the drug Cannabis, otherwise commonly known as Marijuana, Hashish, and other colloquial names, or sell or have in possession for sale or distribution, or manufacture, or cause to be prepared or manufactured, any compound, salt, derivative, or mixture thereof for use in cigarettes, cigars, liquid, confection, or in any other manner, or use or induce any person to use any such product or preparation so manufactured or prepared, or have the drug Cannabis in his possession or control for use or distribution for such purposes.

Nothing herein contained shall prohibit a duly licensed pharmacist from having Cannabis or any compound, salt, derivative, or mixture thereof, in his possession and from selling and distributing the same for medicinal purposes only; nor shall anything herein contained prohibit a wholesale dealer of drugs from having in his or its possession, and from selling and distributing, Cannabis, or any compound, salt, derivative, or mixture thereof, provided that such sale and distribution shall be made to duly licensed pharmacists only.

Sec. 3. Violation a gross misdemeanor.—Any person who shall violate any provision hereof shall be guilty of a gross misdemeanor and upon conviction shall be punished as follows: for the first offense, by a fine not exceeding \$1,000.00, or by imprisonment for not exceeding one year, or by both such fine and imprisonment, and for any subsequent offense, by imprisonment for not less than one year.

Sec. 4. Who may enforce act.—Sheriffs, constables, and other police officers shall enforce the provisions of this act with or without the cooperation of the Department of Agriculture, Dairy and Food, and the Departments of Health of Cities of the First Class.

Sec. 5. This Act shall take effect and be in force from and after its passage.

Approved April 29, 1935.

CHAPTER 322—H. F. No. 85

An act to withdraw from sale all state lands containing deposits of peat in commercial quantities.

Be it enacted by the Legislature of the State of Minnesota: That the several counties of the state, on or before December 31, 1937, the amounts due the respective counties as their share of the vessel tonnage tax under the provisions of Minnesota Statutes 1927, Section 2291.

11. Unexpended balances re-appropriated.—The unexpended balances on June 30, 1935, in the several appropriations made to the activities named in this act are re-appropriated and made available for the fiscal years June 30, 1936, and June 30, 1937, respectively, for the purposes for which such appropriations were made. Where in a previous appropriation for the same purpose, a balance shall be added to and become a part of such appropriation, except as herein otherwise specifically provided. Unexpended balance in the "Burial of Soldiers and Sailors" fund is hereby re-appropriated and made available for the fiscal years ending June 30, 1936 and June 30, 1937, provided, that no payments shall be made for the burial of soldiers and sailors and/or markers for their graves in any year in which Federal funds are received therefor.

12. Salary reduction.—All the foregoing appropriations have been made on the basis of salary reductions of 10 per cent in any and all salaries and wages exceeding \$1320 per annum, no salary, however, to be reduced below the sum of \$1000 per annum. Such reduction is based on rates of salary prevailing in June, 1933, before any reduction was made under the provisions of Laws 1933, Chapter 426. On and after July 1, 1935, the wages of all persons, including those under the provisions of Laws 1933, Chapter 426, shall be reduced so as to be not less than the maximum wage schedule for the month of June, 1933, and any provisions of Laws 1933, Chapter 159, inconsistent herewith are repealed.

Various state department heads and activities included in the foregoing act are hereby given authority to reduce all salaries to less than \$3000 or exceeding \$1320 per annum as may be upon an equitable basis and in any manner they deem best, having regard to the circumstances and convenience of the employee involved.

Various state department heads and activities included in the foregoing act shall determine the salaries to be paid to all their employees as hereinbefore provided, and any classification of

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Peat lands withdrawn from sale.—All lands now or hereafter owned by the state which are chiefly valuable by reason of deposits of peat in commercial quantities, shall be hereby withdrawn from sale.

Sec. 2. Commissioner of Conservation to examine land before any state land is offered for sale the Commissioner of Conservation shall cause such land to be examined to determine whether such land is chiefly valuable by reason of deposits of peat in commercial quantities.

Sec. 3. All acts or parts of acts inconsistent herewith hereby repealed so far as, and only so far as, inconsistent herewith.

Approved April 29, 1935.

CHAPTER 323—H. F. No. 201

An act providing aid to certain school districts and appropriating money therefor.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. State aid to certain school districts.—The state shall pay to each school district wherein any lands are exempt from taxation during the years 1933 and 1934, or during any one or more of said years, by reason of the title thereof having been acquired by the state in the operation of the rural credits system, an amount equal to the amount of the taxes which would have been produced by a tax upon the valuation of such lands, as fixed by the last assessment thereof, at the rate which non-exempt lands were taxed for such school district purposes, during each of such years as said lands were exempt from taxation, the amount to be determined as hereafter provided.

Sec. 2. State Auditor to make statement.—The controller of any county or counties in which any school district is entitled to aid hereunder is situated shall, on or before June 30, 1935, certify to the state auditor a statement of the aid entitling such school district to aid hereunder. Such certificate, in addition to any other information required by the state auditor, shall contain a statement of the following facts:

state employees which may have been or shall be made shall not apply, any law to the contrary notwithstanding. Such adjusted salaries shall not in any event exceed the balances, receipts and appropriations made for salaries and wages of the department.

The heads of the various state departments and activities included herein are directed to consult with the Department of Administration and Finance in an effort to bring the various department salaries as near as possible on the same level. Such reductions are to be construed as an emergency measure applicable only to the years ending June 30, 1936, and June 30, 1937.

Such reductions in and authority to reduce and adjust salaries shall apply to all positions and to all salaries, whether fixed by law or otherwise, and whether such salaries are paid from state appropriations, fees, receipts of any kind, special funds or otherwise, hereby suspending and repealing all laws in conflict with this section.

Sec. 13. Publicity representative prohibited.—No state department, bureau or division, whether the same operates on funds appropriated or receipts or fees of any nature whatsoever, including, but not limited to, the Department of Rural Credits, Highway Department and Game and Fish Division, shall use any of such funds for the payment of the salary or expense of a publicity representative. The head of any such department, bureau or division shall be personally liable for funds spent contrary to the provisions hereof. This shall not be construed, however, as preventing any such department, bureau or division, from sending out any bulletins or other publicity required by any state law or necessary for the satisfactory conduct of the business for which such department, bureau or division was created.

Sec. 14. This act shall take effect and be in force from and after its passage.

Approved April 29, 1935.

CHAPTER 321—H. F. No. 7

An act relating to manufacturing or holding in possession for sale or distribution of the drug cannabis, otherwise commonly known as marijuana, hashish, and other colloquial names, and providing a penalty therefor.

A.13

A.12

EXHIBIT A

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STATE OF MINNESOTA
COUNTY OF HENNEPIN

http://OCRKit.co
DISTRICT COURT
FOURTH JUDICIAL DISTRICT

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State of Minnesota,

Plaintiff,

vs.

Thomas Christopher Wright,

Defendant.

AFFIDAVIT OF
THOMAS CHRISTOPHER
WRIGHT

Court File No. 96075200

STATE OF MINNESOTA)
COUNTY OF HENNEPIN)ss
)

Thomas Christopher Wright, being first duly sworn on oath, hereby deposes and says the following:

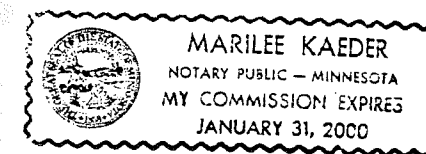
1. Your affiant is the Defendant in the above-entitled matter.
2. Your affiant has had occasion to research official government records from the State of Minnesota concerning the availability of marijuana or hemp as a crop commonly cultivated within the State of Minnesota, prior to the enactment of Article 13, Section 7 of the Minnesota Constitution in 1906 and prior to any legislative action making possession and sale of the plant unlawful.
3. Your affiant's research has led to the following:
 - a. Information from the 12th Census of the United States, 1900, relating to agriculture in Minnesota, maintained by the Minnesota Historical Society, a copy of which is attached hereto as Exhibit A.

- b. The United Census of agriculture, 1920, summarizing farm crops in the State of Minnesota, a copy of which is attached hereto as Exhibit B.
 - c. Pertinent portions of the Agricultural Statistics 1936, maintained by the United States Department of Agriculture, a copy of which is attached hereto as Exhibit C.
 - d. Agricultural statistics, 1938, maintained by the United States Department of Agriculture, a copy of which is attached hereto as Exhibit D.
 - e. The Annual Report of the Department of Agriculture, 1905, a copy of which is attached hereto as Exhibit E.
 - f. The Annual Report of the Department of Agriculture, 1906, a copy of which is attached hereto as Exhibit F.
 - g. The Report of the Committee to Investigate the Growing of Flax and Hemp in Minnesota, Minnesota House of Representatives, 1891, a copy of which is attached hereto as Exhibit G.
4. Your affiant executes this affidavit in support of the attached renewed motion to dismiss the criminal complaint in the above-entitled matter.

Thomas Christopher Wright
Thomas Christopher Wright

Sworn to and subscribed before me this
3rd day of April, 1997.

Marilee Kaeder
Notary Public



1850.

EXPLANATION OF SCHEDULE 4.—AGRICULTURE.

"This schedule is to be filled up in the following manner:

"Insert in the heading the name of the district, town, or city, and the county or parish, and the state in which the farms enumerated are located, and insert the date when the enumeration was made. This is to be attested on each page of each set by signing the schedule.

"In many agricultural returns the amount stated must sometimes be *estimated*, as the number of bushels of wheat or of oats; but under other headings, as to the number of live stock, the precise number or amount can usually be stated. The assistant must use his discretion in assisting a farmer to estimate fairly and accurately the amount of his crops when he keeps no exact account; and in all instances it is desired to make the nearest approximate returns which the case will admit of.

"The returns of all farms or plantations, the produce of which amounts to \$100 in value, are to be included in this schedule; but it is not intended to include the returns of small lots, owned or worked by persons following mechanical or other pursuits, where the productions are not \$100 in value.

"1. Under heading 1, entitled '*Name of individual managing his farm or plantation*,' insert the name of the person residing upon or having charge of the farm, whether as owner, agent, or tenant. When owned or managed by more than 1 person, the name of 1 person only should be entered.

"2 and 3. Under general heading, '*Acres of land*,' and under particular heading, '*Improved land*,' insert the number of acres of improved land; by which is meant cleared and used for grazing, grass, or tillage, or which is now fallow, connected with or belonging to the farm which the assistant marshal is reporting. It is not necessary that it should be contiguous, but it must be owned or managed by the person whose name is inserted in the column.

"Under heading '*Unimproved*,' insert the number of acres of unimproved land connected with the farm. It is not necessary that it should be *contiguous* to the improved land, but may be a wood lot or other land at some distance but owned in connection with the farm, the timber or range of which is used for farm purposes.

"Under heading No. 4, '*Cash value of farm*,' include the actual cash value of the whole number of acres returned by you as improved and unimproved. In this, as in all cases where an amount of money is stated, make your figures represent dollars. Thus, if the cash value of the farm be \$5,000, insert simply the figures 5,000. This rule must be particularly and carefully observed in all cases where amounts of money are to be entered in the columns.

"5. Under heading No. 5 place the aggregate value of all farming or planting implements, and machinery, including wagons, thrashing machines, cotton gins, sugar mills—in fact, all implements and machinery used to cultivate and produce crops and fit the same for market or consumption.

"Under general heading, '*Stock, 1st June, 1850*,' of the whole number of animals which belong to the farm on the 1st day of June, the number of each description thereof is to be inserted under the proper headings, taking care that under heading '*Other cattle*,' you insert the number of all cattle not before enumerated, which are one year old and older.

"11. The number of all sheep which were on said date of one or more years old is to be inserted in column 11.

"12. Under 12 insert the number of swine on the farm on the 1st day of June.

"13. Under heading 13 insert, in dollars, the cash value of all live stock on hand on the 1st of June.

"14 to 44, inclusive, entitled in general heading, '*Produce during the year ending June 1, 1850*.' Insert in the appropriate columns the whole number of tons, bales, bushels, pounds, or value, as the heading may call for, of the respective crops raised on the farm during the year ending the 1st of June. The grain which is gathered in that year is meant, though it may have been sown in 1848.

"45. '*Value of homemade manufactures*.' Under this heading is to be included the value of all articles manufactured within the year preceding the 1st day of June, in or by the family, whether for home use or for sale. If the raw material has been purchased for such manufacture, the value of such raw material should not be included; the object being to ascertain the value of manufactures by the family from their own productions, or the value of the labor expended on the production of others. This discrimination is important.

"46. Under heading 46 insert, in dollars, the value of all animals slaughtered during the year."

AGRICULTURAL SCHEDULES: 1850 TO 1900.

The census of 1850 was the first for which a special agricultural schedule was provided. The progress in the collection of agricultural statistics since that year may be best demonstrated by reproduction of the headings of the schedules for 1850, 1860, 1870, 1880, 1890, and 1900.

There is very little difference shown in the schedules of 1850, 1860, and 1870. All seem to have been prepared in conformity with the provisions of the census act of 1850, which were not materially changed in the three decades.

The schedules for 1850 were of the size 13 by 17½ inches and permitted the enumeration of 41 farms on one sheet. There were 19 subjects with a total of 46 questions.

The schedule for the census of 1860 contained the same number of subjects, but had 48 questions pertaining thereto. A third question as to hemp prepared in ways other than by dew rotting or water rotting was added; and beeswax and honey, which were reported under one head in 1850, were separately classified.

In a few particulars the schedule of 1870 differed from those of 1850 and 1860. Additional facts were called for regarding the acreage and cash value of farms, amount spent for labor, production of wheat, quantity of milk sold, and total value of farm products. The questions relative to the preparation of hemp were abandoned. The total number of queries was increased to 52, but the number of subjects remained the same as for the preceding census.

The census act of 1879 provided for a more elaborate collection of statistics, and a new schedule for agriculture was adopted. This contained 100 questions relating to 25 subjects. Although the sheets were of blanket form, but 20 farms could be entered, 10 on each page. The most important additions to this schedule were the questions of land tenure and those relating to the areas

of the various crops. Inquiries for rice, cotton, and sugar cane were printed on the schedules for the Southern states only.

The schedule for 1890 was even more extensive. In form it was similar to that of 1880, but it allowed the entries of only 10 farms on each schedule. It was folded in the center, thus making 4 pages containing 31 subjects with 256 questions.

For the present census the individual schedule was used for the first time. It was of convenient form and had the advantage of showing the general condition of each farm on one compact sheet. It contained 46 subjects, with a total of 306 questions pertaining thereto.

In addition to the general instructions in pamphlet form, explanations were made on the schedule itself, and minute directions for making the entries were given to enumerators in a circular containing illustrative examples.

To provide for the enumeration of live stock on ranges, and other important information relating thereto, a special schedule was prepared for the census of 1900. It was of the same size as the general schedule for agriculture, and while the questions pertaining to live stock were the same, those concerning subjects other than live stock were formulated to apply specially to the conditions peculiar to ranges or ranches, and consequently differed in numerous instances from the queries to be found in the farm schedule.

In addition to the two above-noted schedules a special form for the enumeration of live stock not on farms or ranges was placed in the hands of all enumerators. The classification of animals was uniform with that of the other schedules.

The instructions issued to the enumerators since 1850, immediately precede, in these pages, the reproduction of the headings of the schedules to which they relate.

(743)

EXHIBIT

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SOME PAGES WERE SKIPPED

well; as I think that before long better fiber will be produced in the state so soon as the farmers see a market for it.

So far as our mill is concerned there is already a market for the common grades of flax, and by the time better kinds are produced we shall be ready for that also. It is not alone with us that the farmers would find a market, because so soon as suitable flax was produced the Eastern spinners would establish commission houses here to purchase the fiber, some of the finest of which could no doubt be shipped to Ireland even at a profit. There are about a dozen large flax mills in the United States, employing about five thousand hands, and several of them have expressed themselves that American flax, if it could be had regularly, is better than what they now import from Russia. These mills also import largely from Canada, and the principal flax-growing firm in Canada have moved one of their scutching mills to Michigan, where they are producing a large quantity of fine flax. What Michigan can do we ought to be able to do in Minnesota, and if the Eastern buyers could depend on regular supplies of flax from the Northwest they would, according to their own published utterances, give the Northwest a preference as compared with Europe or Canada. I consider that the first steps the farmers ought to take should be the cutting of their flax low down, threshing it with a drum or other machine that would not, like the footed cylinder, tear it to pieces.

The straw should be either swath retted before threshing, or spread out to ret after threshing. Such straw, if properly retted, would produce a tangled fiber or tow that would be readily marketable, and there are various brakes before the public that do this work well and economically.

Once the farmer saw that his straw had a marketable value, even in the shape of tow, he would soon find out that if he kept it straight it would be worth more money; and no crop that can be raised gives better return for the labor expended than does flax. In short, with more labor the value increases much more than the cost of the work. In some of the countries of the old world the straw is retted in the fall and during the long winters when no outdoor work can be done, the farmer and his help find profitable employment handscutching the flax, and by the time spring comes he will have accumulated a stock of fiber worth a large sum and which, in this market, would find a ready sale.

In my opinion dew or grass retting is the best system for flax in this state. Our water, as a rule, is hard and gives the flax a harsh feeling, and water retting is not a pleasant occupation by any means; whereas the other is less risky and can be done by any intelligent farmer.

The Irish idea that water retting is absolutely necessary, should not be depended on. The best Russian flax we get, viz: the Archangel, is grass-retted, and Ireland grows only about 100,000 acres anyway, and imports four fifths of the fiber she uses.

In conclusion I would say that the farmers should devote great care to the selection of their seed; attention to this point means a large crop of valuable flax seed, as well as good fiber. All the best flax growing countries change their seed often, and we are bound to do the same here if we want to make a success of the business of raising both seed and fiber. I do not claim to have experience enough to tell the farmer of this section what seed he should use; but whether Russian or Belgian, it should be plump and heavy, color a bright brown, uniform, sinking in water, and above all, free of weed seeds.

Flax to give a good length of straw should be sown about the 20th of April unless the district is liable to late frosts. At least one bushel of seed should be sown per acre.

With regard to hemp, this fibrous plant ought to be raised to advantage in this state. The soil is favorable and nearly every vacant lot in Minneapolis and St. Paul, shows a luxuriant crop of the plant growing wild, without cultivation, and I have personally cut a stem fifteen feet high, in Minneapolis. The seed of the hemp has not the same marketable value as flax, and in reckoning the result of hemp growing, it is safer to count on the fiber only. In Kentucky, the average product of an acre of hemp, is from 1,200 to 1,400 lbs. of fiber worth about 4½ cents per lb. The cost of the planting, harvesting, and scutching is about \$25.00 an acre, so that it can easily be seen that hemp is a very profitable crop. Any good corn or wheat land will grow hemp, and there is a great demand for the fiber for twines and other manufacturing purposes. It is grass-retted same as flax.

The cultivation of fibers tells to the advantage of the farmer in many ways. First, he gets a crop worth a great deal more than wheat. Second, every acre he plants in fibers reduces the competition in food products. Third, he finds a well paid class of operatives growing up in the towns near by who not only work up his fiber but buy his food products, for which he gets a better price than if he had to pay freight on them for a long distance.

Altogether I think it would be wise on the part of the people of Minnesota to devote their attention to an industry which benefits both farmer and townspeople, in other words all classes of the community.

I shall be pleased to correspond with anyone in this state on this subject, and furnish any information and suggestions in my possession, which may aid to develop and establish this great and possible industry in our midst.

Yours truly,
J. CARMICHAEL ALLEN,
General Supt.

MINNEAPOLIS, MINN., March 10, 1891.

C. N. BELL, Esq., ST. PAUL,

DEAR SIR: Referring to my former letter on the subject of retting flax fibers I have received a sample from Winnebago City, Minn., which the sender informs me was picked up after the threshing machine and which was swath retted before being thrashed.

This sample was a very fair quality of tow and such as I could use to advantage in our mill, though of course, it would be worth more to the grower if it had been better cleaned; but it serves to show that in this direction lies an efficient and practical way of turning flax as presently grown in the state to a marketable fiber. It only requires to be run through a brake machine and shaken to be ready for our purposes, and in this way there is no expense incurred in spreading. The gum which causes the fiber to adhere to the straw or shive is really what absorbs most of the valuable constituents of the soil and by retting the flax in this style the gum is returned to the ground where the plant grew.

Since receiving the above sample I have had a conversation with the gentleman from Winnebago City, who informs me that the farm-

Trusting that they will read and heed this little scold in the same spirit in which it is offered, we close this report.

NOTE: On the 19th of December, 1890, John Kerwin and Chas. N. Bell, of St. Paul, obtained of Mr. Bosse, of St. Paul Park, one bale of his flax fiber grown and made by him at St. Paul Park, in 1890. They shipped it to one of the largest linen mills of Belfast, Ireland, to be made into linen goods and returned to St. Paul. The manager of the mill, in a letter received by Mr. Kerwin, on March 14, 1891, declares his astonishment over the good quality of the fiber and says he has dressed down 112 pounds of the fiber to eighty-five pounds, and that when so dressed it has a value of sixty-five pounds per ton, English money; also that he will soon return to St. Paul the linen products of the fiber, and he also urges the production of the fiber in large quantities for shipment to Ireland. These gentlemen claim this to be the first shipment of Minnesota fiber to Europe and that it also shows another outlet for the product of this new industry.

[At this date April 10th, these bills have not passed.]

STATE OF MINNESOTA. TWENTY-SEVENTH SESSION.

H. F. NO. 4.

Introduced by Mr. Bell.

A BILL

For an act to encourage the manufacture of binding twine in the State of Minnesota.

Be it enacted by the Legislature of the State of Minnesota.

SECTION 1. Any company or corporation hereafter organized under the laws of the State of Minnesota and operating in this state for the purpose of manufacturing from material grown exclusively within the state of Minnesota, binding twine of a standard quality for binding grain, and any person who may hereafter engage in such manufacture in this state from material grown as aforesaid, shall be entitled to the benefits of section two (2) of this act, said standard shall be a tensile strength of not less than eighty-five (85) pounds and it shall run not less than five hundred and seventy-five (575) feet to the pound. Provided, however, that no person, company or corporation in any manner interested in the manufacture of binding twine outside of this state shall be in any manner entitled to any of the benefits of this act.

SEC. 2. There shall be paid from the treasury of the state of Minnesota as bounty to any individual, company or corporation aforesaid, the sum of two dollars (\$2.00) for each and every one hundred (100) pounds of binding twine of standard quality aforesaid manufactured by said individual, company or corporation in this state, from material exclusively grown in this state, and said bounty shall be paid annually for the term of five (5) years from the first day of July, 1891, to each individual, company or corporation entitled to the same under the provisions of this act.

SEC. 3. Any person, company or corporation intending to take the benefits of this act in any particular year of the period aforesaid, and each year shall be taken under this act as beginning July first (1st)

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shall, not later than December 1st of each year, notify the secretary of the Minnesota State Agricultural Society, of this state, in writing of such intention and the location of the factory in which it is intended to manufacture said twine, and said twine when manufactured shall be inspected at the expense of the producer by a majority of the commission, which commission shall consist of said secretary of the Agricultural Society, one practical farmer and one of the regents of the University of Minnesota, each to be named by the governor; and in the event said commission or a majority of the members thereof shall be of the opinion that said twine is of the quality in this act prescribed and that this applies to the manufacture of said twine they shall give said producer a certificate to that effect, and said certificate shall also specify the place where and date when said twine is manufactured and the number of pounds of twine of the quality aforesaid inspected, and the state treasurer of this state upon the production of this certificate by the holder, shall pay to the holder thereof out of any moneys in the state treasury not otherwise appropriated, the bounty herein provided.

SEC. 4. Said commission shall not issue any certificate herein provided for until it is satisfied said twine is of the standard herein named and is made exclusively from material grown in this state, and said commission is empowered to call for such evidence under oath or otherwise, in its investigations, as it may deem necessary.

SEC. 5. This act shall take effect and be in force from and after its passage.

STATE OF MINNESOTA. TWENTY-SEVENTH SESSION.

H. F. NO. 585.

Introduced by Mr. Bell.

A BILL

For an act to encourage the production of long line fiber from flax grown in the State of Minnesota.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. Any person or company who shall hereafter make in this state from flax grown in this state long line fiber of the standard hereinafter named, shall be entitled to the benefits of section two (2) of this act; said standard shall be a fiber worth in the markets of this state, or in the United States, not less than one hundred and sixty (160) dollars per ton of two thousand pounds.

SEC. 2. There shall be paid from the treasury of the State of Minnesota as bounty to any person or company aforesaid the sum of two dollars (\$2.00) for each and every one hundred (100) pounds of long line fiber of the standard quality aforesaid, made or manufactured by said individual or company in this state from flax exclusively grown in this state, and said bounty shall be paid annually for the term of five (5) years from the first day of May, 1891, to each individual or company entitled to the same under the provisions of this act.

SEC. 3. Said fiber when manufactured shall be inspected from samples produced or by inspection of said fiber in bulk by a commission, which commission shall consist of one practical flax man, a citizen of this state, and of one of the regents in the University of Minnesota, each to be named annually by the governor of this state, and of the secretary of the Minnesota State Agricultural Society, ex-officio;

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and in event said commission, or a majority of the members thereof, shall be of the opinion that said fiber is of the quality in this act prescribed and that this act applies to the manufacturer or producer of said fiber, they shall give said producer a certificate to that effect, and said certificate shall also specify the place where and date when said fiber was manufactured or produced and the number of pounds of fiber of the quality aforesaid made or produced by said appellant, and the state auditor of this state, upon the production and surrender of this certificate, shall issue to the person named therein, or to his order, a warrant on the treasury of this state for the amount named in said certificate, and said warrant shall be paid out of any moneys in the state treasury not otherwise appropriated, and said warrant shall also be received in payment of state taxes.

SEC. 4. Said commission shall not issue any certificate herein provided for until it is satisfied said fiber is of the standard herein named and is made exclusively from material grown in this state, and said commission is empowered to make such rules and regulations for said inspection, and call for such evidence and samples to aid them in making said inspection and for carrying out the provisions of this act, as it may deem prudent and necessary. Each person or company receiving any bounty under this act shall send or deliver to the agricultural college of this state, located at St. Anthony Park, for use and preservation, before said certificate is delivered, not less than three pounds of said fiber, and with the same a statement in writing showing when, where and by whom said fiber was grown and made and the methods adopted and observed in producing same. No one person or one company shall be entitled to receive under this act in any one year more than one hundred dollars.

SEC. 5. This act shall take effect and be in force from and after its passage.

STATE OF MINNESOTA. TWENTY-SEVENTH SESSION.

H. F. No. 945.

Introduced by Mr. Bell.

A BILL.

For an act to encourage the growth and production of flax and hemp fiber, from flax and hemp grown exclusively in the State of Minnesota.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. Any person or company resident of this state who shall hereafter grow and produce, or produce, flax or hemp fiber from flax or hemp grown exclusively in this state, of a quality fitted and suitable for the making of binder twine, shall be entitled to the benefits of section two (2) of this act.

SEC. 2. There shall be paid from the treasury of the state of Minnesota as bounty to any person or company aforesaid the sum of two dollars (\$2.00) for each and every one hundred (100) pounds of fiber of the quality aforesaid, and said bounty shall be paid annually for the period of five years from the first day of May, 1891.

SEC. 3. Said fiber produced as aforesaid shall be inspected from samples produced or by the inspection of said fiber in bulk by the superintendent of the binder twine machinery at the state prison in Stillwater, Minnesota, and in the event said superintendent is of the

opinion that said fiber is of the quality in this act prescribed, and that the same was produced from flax or hemp grown exclusively in this state and by a person or company resident in this state, he shall issue to said producer a certificate to that effect, and said certificate shall also specify the place where and the date when said fiber was produced, and the number of pounds of fiber of the quality aforesaid made or produced by said applicant; and the state Auditor of this state upon the production and surrender of said certificate shall issue to the person named therein, or to his order, a warrant on the treasury of this state for the amount named in said certificate, and said warrant, shall be paid out of any money in the state treasury not otherwise appropriated, and said warrant shall also be received in payment of state taxes.

SEC. 4. In the event the person or company manufacturing said fiber is not the person who grows the flax or hemp from which the same is produced, then one-half ($\frac{1}{2}$) of said bounty shall be paid by the manufacturer of said fiber to the farmer or person who grows the flax or hemp from which the said fiber is produced, and in making application for said bounty the applicant shall state the name of the person and the residence of the person growing the flax or hemp from which said fiber was produced, and said superintendent shall, in such case, issue his certificate for one-half ($\frac{1}{2}$) of said bounty in favor of the farmer or person growing said flax or hemp as aforesaid.

SEC. 5. Said superintendent shall not issue any certificate herein provided for until he is satisfied that said fiber is of the quality and standard herein named and is made exclusively from flax or hemp grown in this state, and until the applicant therefor shall state in writing to said superintendent the name and residence of the farmer or person producing or growing said flax or hemp, and said superintendent is empowered to make such rules and regulations for such inspection, and call for such evidence and samples to aid him in making such inspection and carrying out the provisions of this act, as he may deem prudent and necessary.

SEC. 6. This act shall take effect and be in force from and after its passage.

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STATE OF MINNESOTA

FILED

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

Court File No. 96075200

Plaintiff,

ORDER AND MEMORANDUM

vs.

Thomas Christopher Wright,

Defendant.

The above-entitled matter came on for motion before the undersigned, Judge of the above-named Court, on May 7, 1997 at the Hennepin County Government Center, City of Minneapolis, County of Hennepin, State of Minnesota.

APPEARANCES WERE AS FOLLOWS:

Randall Tigue, Esq., 2620 Nicollet Ave., Minneapolis, Minnesota, 55408, appeared on behalf of Defendant.

Manuel Guzman, Assistant County Attorney, appeared on behalf of Plaintiff.

The Court having been fully advised in the premises, and based upon the arguments of counsel, and all the pleadings and files on record in this matter, **IT IS HEREBY ORDERED:**

1. That Defendant's Motion to dismiss the criminal complaint based on the unconstitutionality of Minn. Stat. § 152.023, subd. 1(5) is hereby denied.
2. That the attached memorandum is incorporated herein.

BY THE COURT

Dated: August 07, 1997

Allen Oleisky
Allen Oleisky
Judge of District Court

ALLEN OLEISKY
JUDGE OF DISTRICT COURT

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FILED

MEMORANDUM

STATE OF MINNESOTA

FACTS

Thomas Christopher Wright (hereinafter "Defendant") is charged with one count of sale of a controlled substance, in violation of Minn. Stat. § 152.023, subd. 1(5), subd. 3(a); and Minn. Stat. § 609.101, subd. 3. According to the complaint, dated September 30, 1996, police executed a search warrant at Defendant's residence at 3100 Thomas Avenue North in Minneapolis, Hennepin County, Minnesota. Defendant was not present at the time of the search.

Upon entering the residence, officers observed a "grow room" in the upstairs bedroom. They recovered 41 plants of suspected marijuana, along with numerous plants drying and also containers of harvested suspected marijuana buds. According to a police report, there were several grow lights, generators, vents and fans and an air conditioner inside the "grow room." An officer also observed fertilizer/growth material in the room.

In the kitchen, officers recovered a scale and a container with suspected marijuana. In the basement, officers recovered a loaded handgun and a baggie of suspected marijuana. Officers recovered drug paraphernalia throughout the residence, along with numerous mailings to defendant, and his co-defendant wife listing the address of the residence. The suspected drugs were delivered to Minneapolis City Chemist Bruce Person, and tested positive for marijuana weighing over five kilograms.

Now before this Court is Defendant's second motion to dismiss the criminal complaint against him.

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ANALYSIS

Defendant argues that the statute under which he is charged, Minn. Stat. § 152.023, subd. 1(5), sale of marijuana, is unconstitutional, as it violates Article 13, section 7 of the Minnesota Constitution. Specifically, Defendant argues that at the time Article 13, section 7 was adopted, in November of 1906, marijuana was "every bit as legal a substance in the State of Minnesota as wheat, corn, oats, and soybeans." (Defendant's April 3, 1997 Memorandum).

Article 13, section 7 of the Minnesota Constitution provides:

"No license required to peddle. Any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor."

Minn. Stat. § 152.023, subd. 1(5) states:

"Subdivision 1. **Sale crimes.** A person is guilty of controlled substance crime in the third degree if:
(5) the person unlawfully sells one or more mixtures of a total weight of five kilograms or more containing marijuana or Tetrahydrocannabinols."

Minn. Stat. § 152.01, subd. 9 defines "marijuana" as:

"'Marijuana' means all parts of the plant of any species of the genus *Cannabis*, including all agronomical varieties, whether growing or not; the seed thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination."

This Court finds Defendant's arguments unpersuasive. Under the police power, the state may impose those restraints upon private rights which are necessary to protect the general welfare.

See generally State Ex. Rel. Gopher Sales v. City of Austin, 246 Minn. 514, 75 N.W.2d 780 (1956); McElhone v. Geror, 207 Minn. 580, 292 N.W. 414 (Minn. 1940). "It is well established that an exercise of the 'police power' will be upheld where it has for its object the public health, safety, morality, or welfare, and where it is reasonably related to the attainment of those objectives." City of Austin, 246 Minn. at 517.

Furthermore, when the legislature exercises the police power, which is as flexible and adaptable as the needs of our changing society, "[t]he objective of its exercise is the preservation of the public welfare, as distinguished from the protection or advancement of a mere private interest, and the remedy adopted thereunder must be reasonably designed to accomplish its purpose without going beyond the reasonable demands of the occasion. A wide discretion is vested in the legislature in determining when a public welfare need exists and in the selection of an appropriate remedy." Breimhorst v. Beckman, 227 Minn. 409, 430 (Minn. 1949).

Thus, prohibiting the sale of a controlled substance, here marijuana, is clearly within the police powers of the Minnesota State Legislature. The extent of abuse of marijuana, and the risks it poses to public health provide the basis for the prohibition under the state's police powers. In addition, the statute is a reasonable means to accomplish the legislative goals.

The Minnesota Supreme Court has already addressed the constitutionality of classifying marijuana as a Schedule I controlled substance in State v. Hanson, 364 N.W.2d 786 (Minn. 1985). There, the defendant challenged the classification of

marijuana arguing that there are some medical benefits in the use of marijuana. Hanson, 364 N.W.2d at 790. The Hanson Court relied on an Eighth Circuit opinion addressing the issue of the constitutionality of the Federal Controlled Substances Act, 21 U.S.C. §§ 801-904 (1976). "'In addressing this argument, we first note the highly deferential standard of review applicable here. Because there is no fundamental constitutional right to import, sell, or possess marijuana, the legislative classification complained of here must be upheld unless it bears no rational relationship to a legitimate government purpose.'" United States v. Fogarty, 692 F.2d 542 (8th Cir. 1982) cert. denied, 460 U.S. 1040, 103 S.Ct. 1434, 75 L.Ed.2d 792 (1983), cited in Hanson, 364 N.W.2d at 790.

The court rejected the defendant's argument, finding that the statute bears a rational relationship to a legitimate legislative purpose, and that the classification of marijuana in Schedule I does not violate the constitution. Id. at 791. Thus, the inclusion of marijuana as a prohibited controlled substance in the state of Minnesota has already been upheld as constitutional.

In 1906, at the time the State of Minnesota enacted Article 13, section 7, hemp was grown as an agricultural product. Defendant has so shown through the numerous historical documents submitted to the court. A review of these documents shows that hemp was grown as an agricultural product to be used for the production of binding twine and fiber and other manufactured products. (See generally Defendant's Exhibit G, "Flax and Hemp in Minnesota, 1891). In Defendant's Exhibit G, p. 27, entitled "The

Hemp Industry," the article explains that the "principle uses of hemp in this country are in the manufacture of cordage, binder and other twines, and for the mixing with flax in a cheap grade of carpet."

Nowhere in the historical documents submitted by Defendant did this Court find references to the production of hemp for the purpose of harvesting the flowers, leaves or resin to make mood-altering marijuana. Thus, the fact that it was common and legal to produce and sell hemp as an agricultural product in 1906 when Article 13, section 7 was adopted does not preclude the state from using its police powers to protect the general welfare from the evils of drug abuse. "All laws of a democracy are but expressions of a policy drawn, correctly or otherwise, from human experience. It is therefore to be expected that the policy they express will change as new experience teaches that old policy is mistaken either in factual basis or functioning." McElhone v. Geror, 207 Minn. at 583.

It is also important to note that the statute specifically excludes from the definition of marijuana "the mature stalks of such plant, fiber from such stalks, oil or cake made from the seeds of such plant. . . ." See Minn. Stat. § 152.01, subd. 9. A reading of the plain meaning of the statute lends credence to the fact that a person in Minnesota can own products made from hemp, such as clothing, as they are not classified as "marijuana". (For example, one may browse through the products made from imported hemp fabric at the "Third Stone" store located at 520 W. Lake St. in Minneapolis).

The state government in 1906 could not have foreseen or predicted a society many decades later that suffers as a result of the abuses and addictions of drugs. Therefore, the prohibition on the sale and possession of marijuana as a controlled substance is clearly within the state's police powers to protect the health and general welfare of the public. Accordingly, Defendant's motion to dismiss the criminal complaint against him is hereby denied.

A.O.

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

Thomas Christopher
Wright,

Defendant.

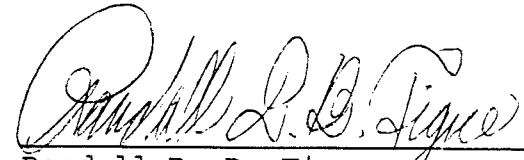
NOTICE OF APPEAL TO COURT OF APPEALS

Trial Court File No. 96075200
Date judgment entered: January 13,
1998

TO: Clerk of the Appellate Courts, Minnesota Judicial Center,
St. Paul, MN 55155:

PLEASE TAKE NOTICE that the above-named Defendant, appeals to the Court of Appeals of the State of Minnesota from a judgment entered on the date shown, adjudging Defendant guilty of the sale of marijuana in violation of Minn. Stat. Sec. 152.03, Subd. 1(5).

Name, address, and telephone number of attorney for Plaintiff:
Manuel Guzman, Assistant County Attorney, C-2100 Hennepin County
Government Center, Minneapolis, MN 55487; 612/348-5858.


Randall D. B. Tigue
Attorney for Defendant
2620 Nicollet Avenue
Minneapolis, Minnesota 55408
(612) 874-9903
Minn. Sup. Ct. Lic. No. 110000

Dated: January 23, 1998

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LEGAL ISSUES

- I. Does MINN. CONST. art. XIII, § 7 create a right to produce and market unsafe products?
- II. Are Minnesota's controlled substance statutes really a licensing scheme regulating the sale of marijuana, or are they criminal prohibitions?
- III. Even if MINN. CONST. art. XIII, § 7 applies to the choice of crops produced by a farmer, does MINN. CONST. art. I, § 1 police power allow the legislature to enact reasonable health and safety regulations that limit what products may be produced and how they are handled?

STATEMENT OF FACTS

Appellant, Thomas Wright, ran a marijuana grow operation in his north Minneapolis home. On September 30, 1996, the Minneapolis Police Department executed a search warrant on the home and found 41 live marijuana plants, several other harvested marijuana plants set out to dry, and containers of marijuana buds. The home was equipped with grow lights, generators, vents, and fans. Officers also found a scale, packaged marijuana, and a loaded handgun. Bruce Person, a chemist with the Minneapolis Department of Health, tested the seized material and confirmed the police seized over 5 kilos of marijuana.¹

Appellant was charged with Controlled Substance Crime in the Third Degree. Appellant filed two motions to dismiss the complaint alleging that enforcement of Minn. Stat. 152.023 against him violated MINN. CONST. art. XIII, § 7. The motion was denied.² Appellant was convicted after a stipulated fact trial. Appellant received a stay of imposition of sentence and probationary terms on January 5, 1998.³

¹ State v. Wright, Order and Memorandum, 8/7/97, Hennepin County District Court SIP No. 96075200.

² Id.

³ State v. Wright, SIP No. 96075200, Judgment and Stay of Imposition of Sentence, 1/8/98.

ARGUMENT

Summary of Argument

Minnesota's controlled substance statutes do not conflict with the constitutional protection given farmers to market their crops for at least three reasons. First, the historical context in which the amendment was passed suggests the amendment was meant to protect the economic process of bringing crops to market, and not to immunize farmers from health and safety laws. Second, Minnesota's controlled substance laws are a criminal prohibition not a civil licensing scheme. Although certain exceptions to the prohibition exist, comparison to other mixed statutes indicates the statute defines a crime rather than an economic regulation. Third, even if the controlled substance statutes have the collateral effect of licensing sales, they are a reasonable accommodation of the equally constitutionally based obligation to protect the public.

I. STANDARD OF REVIEW.

In Federal Distillers,⁴ the Supreme Court outlined the standard of review that applies when a statute is subject to constitutional review:

The legislature possesses all legislative power not withheld or forbidden by the state or federal constitutions. George Benz Sons, Inc. v. Erickson, 227 Minn. 1, 34 N.W.2d 725 (1948). Courts do not pass on the soundness of social or economic theories in the legislative mind when statutes are enacted in exercise of the police power, nor can courts substitute their judgment for that of the legislature as to the wisdom, expediency, or effectiveness of this type of regulation. Fairview Hospital Assoc. v. Public Building Service Union, 241 Minn. 523, 64 N.W.2d [304 Minn. 39] 16 (1954); Lee v. Delmont, 228 Minn. 101, 36 N.W.2d 530 (1949). To warrant the judiciary's declaring an act an invalid, it must be able to point out some constitutional limitation which the act clearly transcends. State v. Corbett, 57 Minn. 345, 59 N.W. 317 (1894).

This act like every legislative enactment, comes to the courts with the presumption in favor of its constitutionality. Clicker v. State, 293 Minn. 149, 197 N.W.2d 434 (1972); Head v. Special School District No. 1, 288 Minn. 496, 182 N.W.2d 887 (1970) *certiorari denied sub nom Minneapolis Federation of Teachers, Local No. 59 v. Spannus*, 404 U.S. 886, 92 S.Ct. 196, 30 L.Ed.2d 168 (1971); 17B., Dunnell, Dig. (3d Ed.) § 8929. The burden of proof is on the challenging parties to show beyond a reasonable doubt that the act violates some particular constitutional provision. National Federation of Teachers v. Obermeyer, 275 Minn. 347, 147 N.W.2d 358 (1966). . . .

When an act is challenged on its face, the reviewing court is permitted to consider neither hypothetical applications of the act which might be unconstitutional nor possible constructions of the act which might render it unconstitutional. If a legislative act is reasonably susceptible of two different constructions, one of which

⁴ Federal Distillers Inc. v. State, 229 N.W.2d 144, 154 (Minn. 1975).

will render it constitutional and the other unconstitutional, the former must be adopted. Hassler v. Engberg, 233 Minn. 487, 48 N.W.2d 343 (1951); State v. Rawland, 294 Minn. 17, 199 N.W.2d 774 (1972).⁵

⁵ Federal Distillers, 229 N.W.2d at 154.

II. ARTICLE XIII, SECTION 7 OF THE MINNESOTA CONSTITUTION PROTECTS THE PROCESS OF BRINGING CROPS TO MARKET, IT DOES NOT GRANT FARMERS THE RIGHT TO GROW OR SELL UNSAFE PRODUCTS.

A. Introduction.

The protection of the process used by a farmer to bring crops to market was an important political goal of the populist movement -- a movement that was alive and well in Minnesota in 1906. The turn of the century also saw tremendous popular demand for safe food and drug laws. An examination of the historical context of the 1906 amendment strongly suggests MINN. CONST. art. XIII, § 7 was meant to protect the sales process, but was never meant to undermine the State's ability to insure a safe food and drug supply. MINN. CONST. art. XIII, § 7 insures that a farmer may take the fruits of his labor to market without the burden of a license or other economic taxation. The farmer may not, however, sell unsafe or misbranded products in violation of reasonable health and safety regulations.

Appellant makes an overly broad reading of the amendment that suggests the voters of 1906 granted the farmer the right to grow anything - including unsafe products. In light of the times, it seems unlikely that the legislature and people of Minnesota meant to forfeit their ability to protect themselves from the horrors of unsafe food or drugs.

B. The Historical Context of the 1906 Amendment.

The 1905 legislature (that put MINN. CONST. art. XIII, § 7 to the voters in the 1906 elections) convened in a whirlwind of agrarian unrest. Although the Granger

Movement that brought this unrest to the political forefront was largely disbanded by 1905, its influence was still felt in the state legislatures of the time.⁶ As defined by the founder of the Grange Movement, Oliver Hudson Kelly, agricultural reforms were designed to allow the farmer to compete with the "monopolistic practices of railroads and elevators and to institute for themselves cooperative methods of buying and selling."⁷ Protection of the economic interests of farmers was a plank in the platform of failed 1896 presidential candidate William Jennings Bryan. For example, the scarcity of credit available to farmers caused by the tight money policies of the gold standard, prompted his most famous quote: "You shall not press down upon the brow of labor this crown of thorns. You shall not crucify mankind upon a cross of gold."⁸ Minnesota's own Ignatius Donnelly expanded on this economic theme in the Omaha Platform of 1896 (statement of the fundamental principles for the populists). "Wealth belongs to those who toil to create it. The farmer should not lose the value of his labor at the hands of forces he does not control."⁹

The economic themes of the populist era resonated in Minnesota.¹⁰ The Minnesota Constitution was amended to "prohibit the monopolization of markets of

⁶ Buck, Solon, *The Granger Movement* (Lincoln, NE: University of Nebraska Press, 1913); see also John D. Hicks, *The Persistence of Populism*, reprinted in *Selections From Minnesota History* (St. Paul: Minnesota Historical Society, 2nd printing, 1979)

⁷ Id., see also, Clanton, Gene, *Populism: The Humane Preference in America, 1890-1900* (Boston: Twayne Publishers, 1991).

⁸ Speech at the National Democratic Convention, Chicago, 1896.

⁹ Fink, Leon, *Major Problems in the Gilded Age and the Progressive Area* (Lexington, DE: Heath and Company, 1993, pg. 182).

¹⁰ Chrislock, Carl, *The Progressive Era in Minnesota, 1899-1918*, St. Paul, Minnesota Historical Society, 1971.

food products" in 1888. Years later, voters narrowly rejected an amendment to establish state-owned grain elevators.¹¹ Populist themes emerged in statute as well. Farmers were organized into cooperative marketing associations.¹² Railroad regulation became a mainstay of legislative business.¹³

Underlying all of the political sentiment and statutory activity is the central theme of granting farmers an economic advantage in the marketing process. Whether against unreasonably high rail or grain storage rates or local taxation in the form of license fees, the underlying premise was the protection of the farmer's income, not the absolute right to raise and process whatever crop the farmer pleased.

Concurrent with State efforts to protect the economic interests of farmers, the public demanded health and safety regulation of agricultural products. In 1906, Upton Sinclair published "*The Jungle*," a scathing expose of the Chicago meatpacking industry.¹⁴ An outraged President Theodore Roosevelt pushed the first "Pure Food and Drug Act" through Congress.¹⁵ Minnesota was among the states following this national trend. Minnesota enacted extensive controls over agricultural products around the turn of the century. Pure food and agricultural safety laws extended to almost every

¹¹ Minnesota Legislative Manual, Minnesota Constitutional Amendments, 1995-96, pg. 41, 43.

¹² Minnesota Wheat Growers Co-op Marketing Assoc. v. Huggins, 203 N.W. 420, 423 (Minn. 1925), see also, Laws 1878 Ch. 34 (establishing Minnesota State Grain Producers Cooperative).

¹³ Laws 1899, Ch. 314, 100, 170, 196, 51; Laws 1901, Ch. 150, 225, 248, 165, 270; Laws 1903, Ch. 79, 86, 189, 253, 262, 278, 319, 320, 336; Laws 1905, Ch. 196, 176, 177, 230, 250, 208, 221, 280, 252, 308, 122, 287.

¹⁴ Sinclair, Upton, *The Jungle* (Cambridge: 1971).

¹⁵ Hunt, John Gabriel, *The Essential Theodore Roosevelt* (New York: Gramercy 1994)

field of agricultural endeavor. Statutes regulated the handling of fresh milk, prohibited the mixing of butter and lard, required imitation dairy products be colored pink, imposed detailed regulation on the processing of meat products, and prohibited the marketing of grain seeds not gleaned for weed seeds.¹⁶

The same legislative session that put MINN. CONST. art. XIII, § 7 to the voters in the form of a constitutional amendment also passed Chapter 158: "An act to provide for the better enforcement of laws forbidding, regulating and punishing the sale and use of commodities designed for human consumption which are deleterious to health and not true in name."¹⁷ This act empowered the Dairy and Food Commissioner to enter any storage house and open any package if the commissioner believed its contents could be deleterious to the health of the ultimate consumer or in any other way was forbidden by the laws in force at that time. Failure on the part of any person to assist the commissioner to abide by the provisions of Chapter 158 was made a misdemeanor.¹⁸ This statute contained no exception for farmers peddling or selling the fruits of their own farm.

The historical context surrounding the 1906 amendment suggests both what the amendment meant to do and what it was not meant to do. The amendment, in line with

¹⁶ The Dairy and Pure Food Laws of the State of Minnesota, compiled to the close of the legislative session of 1905, Edgar K. Slater, Dairy and Food Commissioner, Minneapolis: Harrison and Smith, 1905 (archived at the Minnesota Historical Society).

¹⁷ Minnesota Laws 1905, Ch. 158.

¹⁸ Id. at subd. 5.

general populist sentiment, seeks to ensure that farmers enjoy unfettered access to consumers. Put another way, the farmer enjoys the right to pocket the profit of the fields without sharing the proceeds with state or local government in the form of a license fee. The amendment was passed, however, in the context of general demands for safe food and drug regulation. It passed out of the legislature in the same session as a stringent commodity inspection law that did not exempt individual farmers from a host of other safe food and drug laws. The only logical reconciliation of these two themes is a finding that the amendment means nothing more than what it says -- sales may not be licensed. The amendment does not override safe food and drug laws -- including the laws prohibiting dangerous drugs.

Although there is little precedent interpreting MINN. CONST. art. XIII, § 7, the few cases mentioning this section support the "sales not safety" interpretation of the amendment. In State v. Parr, the Supreme Court considered a uniform application of laws challenge to a 1909 hawker or peddler statute. The court noted that the former version of MINN. CONST. art. XIII, § 7 may be an exemption from the uniform application of laws section of the constitution. The court defined the amendment as a "privilege to sell."¹⁹ In Minnesota Wheat Growers Co-op Marketing Assoc., the Supreme Court again considered the former version of this amendment in the context of an anti-trust challenge to Minnesota's Cooperative Marketing Act.²⁰ That court defined the amendment in terms of the privileged marketing position granted farmers:

¹⁹ State v. Parr, 123 N.W. 408, 409 (Minn. 1909).

²⁰ Minnesota Wheat Growers Co-op Marketing Assoc. v. Huggins, 203 N.W. 420, 423 (Minn. 1925).

By Section 18, Article I, Const. Minn., recognition is given to the fact that tillers of the soil stand in a peculiar position *in reference to the marketing of their products*, and it prohibits the imposition of a license to sell or peddle the same. The Supreme Court of the United States has said that: 'From time out of mind it has been the policy of this government, and not only to classify for purposes of taxation, but to exempt producers from the taxation *of the methods employed by them to put their products upon the market.*' (citations omitted) (emphasis added)²¹

Nowhere in these interpretations is there any suggestion that farmers were exempt from reasonable regulation of their produce for health and safety reasons.

Finally, the larger historical inferences aside, at least one Attorney General's opinion, rendered 56 years ago, supports the sales theory. The Attorney General, in issuing an opinion about the constitutionality of a local dairy regulation, suggested MINN. CONST. art. XIII, § 7 was passed as a direct response to two Minnesota Supreme Court cases upholding steep license fees on persons peddling the produce of their own farms.²² In Jensen, the Supreme Court upheld a Minneapolis ordinance imposing a \$125 license fee, in 1904 dollars, and specifically found the term "peddler" included a farmer selling his own produce.²³ An attempt to statutorily exempt farmers selling their own produce was rejected by that same court in State v. Luria. The court found such an exemption ran afoul of the uniform legislation clause in the Minnesota Constitution.²⁴ Because a statutory amendment could not exempt a farmer without running afoul of the

²¹ Minnesota Wheat Growers Co-op, 203 N.W. at 423.

²² Opinion of the Attorney General, 292-E, 5/14/42.

²³ State v. Jensen, 100 N.W. 644, 645 (Minn. 1904).

²⁴ State ex. rel. Luria v. Wagner, 72 N.W. 67, 68 (Minn. 1897)

constitution,²⁵ it follows that a constitutional amendment was necessary if farmers were to be exempt from licensing fees.

This is consistent with the broader political trends in place when the amendment was adopted. The underlying issue was keeping money in the farmer's pocket -- not exemption from reasonable health and safety regulations.

Appellant's unsupported allegation that a ban on an unsafe product is nothing more than an ultimate license is wrong.²⁶ The legislature and voters of 1906 meant something different. The historical context of the amendment leads to the conclusion that farmers would not bear the economic burden of a license. The obligation to produce safe products, however, remains intact.

²⁵ Opinion of the Attorney General, 292-E; see also State v. Pehrson, 287 N.W. 316 (Minn. 1939).

²⁶ Appellant's Brief, page 11 n.7.

III. MINNESOTA'S CONTROLLED SUBSTANCE STATUTE IS A CRIMINAL PROHIBITION, NOT A CIVIL LICENSING SCHEME.

A. Introduction.

By its own terms, art. XIII, § 7 of the Minnesota Constitution prohibits the imposition of a licensing scheme on farmers peddling the fruits of their own labor. It does not purport to limit the legislature's power to prohibit unsafe products. Minnesota's controlled substance statute is an expression of the legislative power to prohibit unsafe products. It does not run afoul of the licensing prohibition.

Appellant attempts to recast the prohibitions found in Chapter 152 as a licensing scheme because, in very limited instances, the possession of marijuana is permitted.²⁷ The fact that a law permits exceptions does not alter its essential character. In two other areas, land use - taking and civil forfeiture, the courts have been asked to characterize statutes that were written to serve one purpose as de facto exercises of another. Application of that analysis to this case suggests that Minn. Stat. Ch. 152 should be characterized as a criminal prohibition rather than a licensing scheme.

B. Comparison to Zoning and Forfeiture Cases.

Just as a zoning regulation may become so restrictive that it becomes a taking, or a civil forfeiture statute so punitive that it becomes a crime, the controlled substance statute is so restrictive and punitive that it cannot be characterized as a license scheme and must be characterized as a criminal prohibition.

²⁷ Minn. Stat. 152.21.

The United States Supreme Court has repeatedly passed on zoning or environmental regulations that cross the line from reasonable regulation to de facto takings.²⁸ Admittedly, the courts have wandered significantly in defining when a regulatory scheme imposes such a significant burden on a private activity as to amount to a taking.²⁹ Nevertheless, the cases universally acknowledge that the existence of some possibility of use on the controlled land is not enough to save characterization of the statute as a taking. For example in Nollan, the landowners wanted to replace a small beach house with a large one. A coastal land use regulation prohibited the expansion. Even though the landowner remained free to enjoy the smaller home, the expansion prohibition was significant enough to constitute a taking.³⁰ Similar partial restrictions have been applied to building height restrictions,³¹ highway access,³² and designation as a historic preservation site.³³ In all of these instances, the fact that the regulation was not absolute; that some possibility of alternative use was available, was insufficient if the "effective" or "reasonable" use of the property is prohibited. If it is, the regulation is really a taking.³⁴

²⁸ *Means, Motives and Takings: The Nexus Test of Nollan v. California Coastal Commission*, 12 Harvard Environmental L.Rev. 231: 1988.

²⁹ Compare, Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922) with, Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992) and Mugler v. Kansas, 123 U.S. 623 (1887).

³⁰ Nollan v. California Coastal Commission, 483 U.S. 825 (1987).

³¹ McShane v. Faribault, 292 N.W.2d 253 (Minn. 1980).

³² Hendrickson v. State, 127 N.W.2d 165 (Minn. 1964).

³³ State by Powderly v. Erickson, 285 N.W.2d 84, 90 (Minn. 1979).

³⁴ Erickson, 285 N.W.2d at 90.

A similar example is found in recent forfeiture cases. A civil forfeiture statute, although written as a remedial regulation of illicit property, will convert to the equivalent of a criminal punishment unless the regulation can “fairly be characterized as remedial.”³⁵ A reviewing court may look to the legislature motivation for a statute and determine whether the statute was meant to raise revenue or deter conduct.³⁶ Likewise, a court may look to a statute’s effect and measure its remedial effect against its punitive impact.³⁷

Appellant’s contention here poses the reverse of the taking-forfeiture question. Appellant asks this Court to find that the controlled substance act can be fairly characterized as remedial because it is meant to regulate the flow of controlled substances rather than act as a criminal prohibition. This simply isn’t a fair characterization of Ch. 152. The primary function of the chapter is to punish those who violate its provisions and to deter those who contemplate a violation.

The primary purpose of the statute may be seen in its definitions. Minnesota law classifies marijuana as a Schedule I controlled substance.³⁸ A Schedule I controlled substance is defined as a substance that has “a high potential for abuse, no currently accepted medical use in the United States, and a lack of accepted safety for use under medical supervision.”³⁹ Thus, by definition, Minnesota law holds that marijuana has

³⁵ State v. Hanson, 543 N.W.2d 84, 87-88 (Minn. 1996).

³⁶ Dept. Revenue v. Kurth Ranch, 511 U.S. 767 (1994).

³⁷ U.S. v. Ursery, ___ U.S. ___, 116 S.Ct. 2135 (1996).

³⁸ Minn. Stat. 152.02, subd. 1(3).

³⁹ Minn. Stat. 152.02, subd. 7(1).

no legitimate medical use. It follows that a statute banning the use of a product that has no legitimate use cannot be interpreted as a licensing scheme simply taxing or regulating its sale. Put simply, there is no lawful commerce in marijuana that the statute seeks to tax or license.⁴⁰ Applying the logic of either the taking or forfeiture statutes leads to the same result. There is no alternative legitimate use of marijuana that is left to the marijuana growers of Minnesota. The growth and use of marijuana is completely barred. Likewise, if Minnesota's civil forfeiture statutes included long prison terms and fines such as those that are found in Minnesota Chapter 152, the appellate courts of the state would have little difficulty finding the statute's intent punitive and its imposition a violation of Double Jeopardy Clause.⁴¹

Minnesota statute 152.21 does not convert the criminal prohibition into a licensing scheme. This provision allows doctors who meet stringent federal requirements to act as "clinical investigator[s]" in an effort to discover whether marijuana is an effective pain killer for cancer patients.⁴² This limited function is hardly a primary purpose of the controlled substance laws. To the contrary, it is a legislative concession that the rational basis for today's wholesale ban on marijuana may change tomorrow.⁴³ Obviously, legislative responses are not perfect. They may change as science or other conditions in society change.⁴⁴

⁴⁰ State v. Vail, 274 N.W.2d 127, 134-35 (Minn. 1979).

⁴¹ Hanson, 543 N.W.2d at 89; State v. Rosenfeld, 540 N.W.2d 915 (Minn. Ct. App. 1995).

⁴² Minn. Stat. 152.21, subd. 1-6.

⁴³ State v. Hanson, 364 N.W.2d 786, 790 (Minn. 1985).

⁴⁴ State v. Vail, 274 N.W.2d at 136 (citing Williamson v. Lee Optical, 348 U.S. 483 (1955)).

The existence of this exception, suggests the rule. The fact the legislature opened a narrow window for future legitimate uses of marijuana strongly suggests that the law currently means to completely prohibit its use. Minn. Stat. 152.21 simply leaves open the possibility of a future legitimate commerce in marijuana. The existence of the possibility of such future commerce confirms the statute does not mean to license any commerce today.

The existence of changing conditions dispenses with Appellant's argument that the production of hemp for fiber in 1906 means the legislature intended to protect its cultivation forever. As the United States Supreme Court in Williamson points out, changing conditions provoke changing legislative responses.⁴⁵ The use of marijuana as an intoxicant apparently did not emerge as a social ill requiring legislation until after 1906. Just as marijuana may emerge as a useful pain killer after 152.21 research is completed -- and be legalized -- so may the legislature of 1935 amend the law to prohibit its use as the society of that era recognized marijuana to be a problem.

Finally, the existence of exceptions is common in criminal statutes. Exceptions do not undermine their essentially punitive nature. The deprivation of parental rights statute, for example, creates several exceptions where the actor believes the taking is required to prevent harm.⁴⁶ The receiving profit from prostitution statute exempts dependent children and the retail sale of goods and services.⁴⁷ The bad check law

⁴⁵ Id.

⁴⁶ Minn. Stat. 609.26, subd. 2.

⁴⁷ Minn. Stat. 609.323, subd. 3a, 4.

exempts post-dated checks or checks given for past consideration.⁴⁸ Nevertheless it would not be reasonable to characterize these statutes as mere civil regulations. It remains a crime in Minnesota to kidnap children, receive the profit of prostitution, and issue bad checks. It is also a crime in Minnesota to possess or sell marijuana. The controlled substance penalties aren't penalties for selling marijuana without a license -- they attach for any possession or sale at all.

⁴⁸ Minn. Stat. 609.535, subd. 5.

**IV. THE RIGHT TO MARKET CROPS FOUND IN
ARTICLE XIII, SECTION 7 IS LIMITED BY THE
OBLIGATION IMPOSED IN ARTICLE I, SECTION
1 TO PROTECT THE HEALTH AND SAFETY OF
THE PEOPLE OF THE STATE OF MINNESOTA.**

A. Introduction.

Art. XIII, § 7 of the Minnesota Constitution, and the important agricultural interest it represents, does not exist in a void. The Minnesota Constitution imposes a parallel duty on the government of the state to act for the "security, benefit and protection of the people."⁴⁹ The controlled substance laws are an expression of that constitutional police power.⁵⁰ MINN. CONST. art. XIII, § 7 must be read in light of the co-equal constitutional responsibility to protect the people of Minnesota. As such, Appellant has no more right to raise and sell marijuana than he has to shout fire in a crowded theater.⁵¹ The right of a farmer to bring crops to market does not include the right to grow or sell dangerous agricultural products.

B. The Controlled Substance Act Is A Legitimate Exercise of Police Power.

Exercises of state police power have long checked activity that would otherwise be protected by the constitution. For example, free speech exists within the limits of

⁴⁹ MINN. CONST., art. I, § 1.

⁵⁰ State v. Vail, 274 N.W.2d 127, 134-36 (Minn. 1979); Federal Distillers Inc. v. State, 229 N.W.2d 144, 154 (Minn. 1975) (alcohol regulations); State v. Hanson, 364 N.W.2d 786, 790-91 (Minn. 1985).

⁵¹ Schenck v. U.S., 249 U.S. 47 (1919) (Holmes, J.).

obscenity laws,⁵² defamation laws,⁵³ laws protecting public order,⁵⁴ and, in the context of commercial speech, laws preventing fraud.⁵⁵ Freedom of religion is limited by laws prohibiting child labor,⁵⁶ polygamy,⁵⁷ and manslaughter.⁵⁸

The appellate courts in Minnesota repeatedly reached the same conclusion. "The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country as essential to the safety, health, peace, good order and morals of the community."⁵⁹ The right to travel and the right of association may be limited by terms of probation that "protect the public" against continued criminal activity.⁶⁰ Freedom of religion does not bar legislative regulations designed to prevent fraud in charitable solicitations.⁶¹ The right to privacy

⁵² Miller v. California, 413 U.S. 15 (1973).

⁵³ Garrison v. Louisiana, 379 U.S. 64 (1964).

⁵⁴ Cohen v. California, 403 U.S. 15 (1971).

⁵⁵ First National Bank of Boston v. Bell, 435 U.S. 765 (1978).

⁵⁶ Prince v. Massachusetts, 321 U.S. 158 (1944).

⁵⁷ Reynolds v. U.S., 98 U.S. 145 (1870).

⁵⁸ Craig v. State, 155 A.2d 684 (MD 1959).

⁵⁹ Minnesota State Board of Health by Lawson v. City of Brainerd, 241 N.W.2d 624, 633 (Minn. 1976) (citing Crowley v. Christensen, 137 U.S. 86, 89 (1890)).

⁶⁰ State v. Haynes, 423 N.W.2d 102, 104 (Minn. App. 1988), see also State v. Friberg, 435 N.W.2d. 509 (Minn. 1989).

⁶¹ Caucus Distributors Inc. v. the Commissioner of Commerce, 422 N.W.2d 264 (Minn. Ct. App. 1988).

does not prevent the State from fluoridating the public water system in the interest of public health.⁶²

The appellate courts have not addressed the interplay between the health and welfare interests expressed in the controlled substance statutes and MINN. CONST. art. XIII, § 7. The controlled substance statutes have, however, been balanced against other constitutional concerns. In State v. Vernon, the Supreme Court balanced the State's constitutional health and welfare interests in regulating controlled substances with equal protection, due process, and privacy concerns.⁶³ The Vernon Court found that while the use of controlled substances may affect the personal right to privacy and property rights, prohibitions against the use or sale of controlled substances were a "necessary and reasonable way of advancing the State's interests."⁶⁴ This reasoning was extended to claims of protected medical privacy in the use of marijuana in State v. Hanson.⁶⁵

There's little reason to believe that balancing health and safety concerns found in the marijuana laws against the constitutional right to bring a crop to market would produce a different result. The right to sell without a license does not include the right to sell unsafe products. Appellant's suggestion that the 1906 amendment immunized all farm products from health and safety laws as long as the farmer conducts the sale

⁶² Minnesota State Board of Health by Lawson v. City of Brainerd, 241 N.W.2d 624 (Minn. 1976).

⁶³ State v. Vernon, 283 N.W.2d 516 (Minn. 1979).

⁶⁴ Vernon, 283 N.W.2d at 519.

⁶⁵ State v. Hanson, 468 N.W.2d 77, 79 (Minn. App. 1991).

would negate a substantial portion of the State's art. I, § 1 obligations to protect the public.

If a farmer is exempt from health and safety regulations, a number of Minnesota laws would be void. If a farmer raised nightshade mushrooms and sold them at a roadside stand without disclosing their poisonous nature, does MINN. CONST. art. XIII, § 7 immunize the farmer from the assault and homicide laws?⁶⁶ If a farmer raises sweet corn but dips it in poison before it's sold, is the farmer excused from the food adulteration laws?⁶⁷ If the farmer raises and sells swine knowing they are infected with tuberculosis, is the farmer immune from the diseased meat laws?⁶⁸ If a farmer left the milk produced in his dairy operations in the sun for a week and then sold it as fresh milk, is the farmer immune from Minnesota's dairy laws?⁶⁹ Obviously, the broad and compelling State interest in protecting public health must limit the constitutional right of a farmer to market products. To find to the contrary could produce devastating results and void a vast number of agricultural regulations found in Minnesota statutes.⁷⁰

This is especially true where the interest protected in MINN. CONST. art. XIII, § 7 - selling and peddling without a license - is collateral to what the health and safety

⁶⁶ Minn. Stat. 609.02, subd. 10; Minn. Stat. 609.195; Minn. Stat. 609.20.

⁶⁷ Minn. Stat. 609.235; Minn. Stat. 609.687; Minn. Stat. 17.42; Minn. Stat. 25.37; Minn. Stat. 31.02, et. seq.

⁶⁸ Minn. Stat. 17A.091; Minn. Stat. 609.31A.20; see also Minn. Stat. 17.04 (vesting enforcement of food laws in the Commissioner of Agriculture); Minn. Stat. 29.24 (adulterated eggs); Minn. Stat. Ch. 35.063-09.

⁶⁹ Minn. Stat. 31.123 (food misbranding); Minn. Stat. 32.31, 34.411-15.

⁷⁰ Minn. Stat. Ch. 17-42.

laws prohibit - the production, possession and sale of an unsafe product. The statute treads into protected sales territory no farther than public safety demands. Appellant remains entitled to the unfettered sales of the fruits of the garden as long as that garden produces safe fruits. The controlled substance statute is a reasonable exercise of the State's constitutional obligation to protect its people. It does not unreasonably limit the right of a farmer to market crops and as such does not violate MINN. CONST. art. XIII, § 7.

CONCLUSION

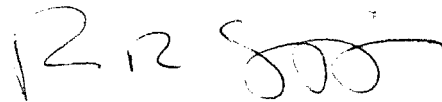
MINN. CONST. art. XIII, § 7 was never meant to prohibit legislation regulating the safety of farm products. It simply limits the ability of state and local governments to license the sales of farm products. The Minnesota controlled substance statutes, on the other hand, are criminal prohibitions enforcing the State's constitutional obligation to protect its people. They are not a licensing scheme. Even if the controlled substance statutes collaterally affect the ability of a farmer to market a crop -- they are a reasonable accommodation in the interest of public health. A farmer has no more right to produce and sell dangerous products under MINN. CONST. art. XIII, § 7 than he does to yell "fire" in a crowded theater under the First Amendment.

DATED: August 3, 1998

Respectfully submitted,

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**STATE OF MINNESOTA
IN COURT OF APPEALS**
Appellate Court Case No. C4-98-179

State of Minnesota,

Respondent,

vs.

Thomas Christopher
Wright,

Appellant.

APPELLANT'S REPLY BRIEF AND APPENDIX

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INTRODUCTION

This brief is being submitted for the limited purpose of replying to Respondent's brief, dated August 3, 1998.

To the extent that any arguments made in that brief are not expressly addressed in this reply brief, such omission should not be considered an agreement with or concession of the validity of said arguments, but rather as only reflecting Appellant's position that the argument is addressed adequately in Appellant's original brief.

ARGUMENT

I. THE PURPORTED CONCERN OF HEALTH AND SAFETY CANNOT JUSTIFY A LEGISLATIVELY CREATED WHOLESALE EXEMPTION OF MARIJUANA FROM THE PROTECTIONS OF ARTICLE 13, SEC. 7 OF THE MINNESOTA CONSTITUTION.

In many ways, Respondent's brief is more interesting for what it fails to say than it is for what it says.

First of all, Respondent does not dispute that Article 13, Sec. 7 of the Minnesota Constitution guarantees to all persons in the state the right to "sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor."

Moreover, Respondent does not dispute that, at the time this provision was adopted into the Minnesota Constitution in 1906, marijuana was a crop which could be legally possessed and sold within the state, just as much as corn, oats, soybeans, or any other crop, there being no legal prohibition on the possession or sale of marijuana until 1935.

Respondent does not dispute that in none of the legislation on the subject of marijuana adopted since 1935, has there ever been an attempt to amend the provisions of Article 13, Sec. 7, to

remove marijuana from its protection.

Finally, Respondent does not dispute that, at the time Article 13, Sec. 7 was introduced into the Minnesota Constitution in 1906, the hemp plant, from which marijuana was derived was widely grown and sold within the State of Minnesota, indeed, with the encouragement of the Minnesota Legislature.

What Respondent does say in numerous ways, is that, notwithstanding Article 13, Sec. 7, the legislature has the right to enact legislation to protect the health and safety of its citizens, notwithstanding Article 13, Sec. 7, just as it has to protect the public from poisoned, adulterated, or contaminated agricultural products of any sort.

There are several obviously responses to Respondent's "health and safety" argument.

To begin with, there is no question that the government, consistently with Article 13, Sec. 7, could, by statute enact legislation prohibiting the sale of poisoned, adulterated, or otherwise contaminated, marijuana, Article 13, Sec. 7 notwithstanding. That is not what is at issue here. There is no contention that the marijuana possessed, allegedly for sale, by Appellant in the instant case was poisoned, adulterated, contaminated, or otherwise made unsafe.

What is at issue is whether the government, by mere legislation alone, as opposed to constitutional amendment, can eliminate an entire crop, such as marijuana, from the protection of Article 13, Sec. 7. The answer to that question clearly must be in the negative.

To begin with, the blanket assumption set forth in Minn. Stat. Sec. 152.02, Subd. 7(1), cited in Respondent's brief at p. 15 that marijuana has a "high potential for abuse, no currently accepted medical use in the United States and a lack of accepted safety for use under medical supervision," is one that is highly questionable at best. See the decision of *Francis v. Young*, administrative law

judge of the Drug Enforcement Administration, in the *Matter of Marijuana Scheduling Petition*, docket No. 86-22 (1988), set forth in the reply Appendix at R.A. 1-R.A.72.

Secondly, and more importantly, even conceding that this argument has been foreclosed by prior decisions of the Minnesota Supreme Court,¹ the notion that any health and safety concern would somehow justify the removal of an entire crop from the protections of Article 13, Sec. 7 would render those protections meaningless. As pointed out in Appellant's original brief, there is virtually no crop currently under the protection of Article 13, Sec. 7, about which a health and safety claim could not be made. Milk and eggs contain cholesterol, which leads to heart disease. Virtually any fruit, grain or any vegetable, can be distilled into alcohol, which also raises health concerns. Any tobacco grown in Minnesota is likely to be a carcinogen.

The obvious answer to this problem is that, while it is true that the government, pursuant to its police power has the right to ban any product inherently unhealthy or unsafe, once the right to sell the products of a farm or garden owned by citizens are enshrined into the Constitution, products may be exempted from that protection only by constitutional amendment, and not by statute. This was made absolutely clear in the recent decision of United States Supreme Court in *Clinton v. City of New York*, 66 U.S.L.W. 4543 (June 25, 1998), in which the United States Supreme Court invalidated the Line Item Veto Act. The Act, enacted out of a legitimate congressional concern over the burgeoning budget deficit, authorizes the President, after signing a bill into law, to "cancel in whole" three types of provisions:

¹See *State v. Vail*, 274 NW 2d 127 (Minn. 1979), and *State v. Hanson*, 364 NW 2d 786 (Minn. 1985). however, both of these cases predate the extensive and scholarly decision of Judge Young, showing that total lack of any scientific merit into the purported health and safety claims about marijuana. Plainly, in light of this significant of this new evidence, the rationale of the *Vail* and *Hanson* decisions should be revisited.

“(1) any dollar amount of discretionary budget authority; (2) any item of new direct spending; or (3) any limited tax benefit.”²

The United States Supreme Court held that this provision, however, justified it might be as a policy measure, plainly violates Article I, Sec. 7 of the United States Constitution, which provides, in pertinent part, as follows:

“Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he approves it he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their journal, and proceed to reconsider. It after such Reconsideration two-thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a Law.”³

In declaring the provision to be unconstitutional, the Court’s majority, in an opinion by Justice Stevens, wrote:

“Although congress presumably anticipated that the President might cancel some items in the Balanced Budget Act and in the Taxpayer Relief Act, Congress cannot alter the procedures set out in Article 1, Sec. 7, without amending the Constitution (emphasis supplied, footnote omitted).” *Id.* at 4551.

Justice Stevens further wrote:

“[O]ur decision rests on the narrow ground that the procedures authorized by the Line Item Veto Act are not authorized by the Constitution. The balanced Budget Act of 1997 is a 500 page document that became ‘Public Law 105-33’ after three procedural steps were taken: (1) a bill containing its exact text was approved by a majority of the members of the House of Representatives; (2) the Senate approved precisely the same text; and (3) that text was signed into law by the President. The Constitution explicitly requires that each of those three steps be taken before a bill may ‘become a law. Art. I, Sec. 7. If one paragraph of that text had been omitted at any one of those stages, Public Law 105-33 would not have been validly enacted. If the Line Item Veto Act were valid, it would authorize the President to create a different law-

²See 2 U.S.C. Sec. 691(a) cited at *Id.* at 4548.

³Cited at *Id.* at 4549, n. 28.

one whose text was not voted on by either House of Congress or presented to the President for signature. Something that might be known at ‘Public Law 105-33 as modified by the President’ may or may not be desirable, but it is surely not a document that may ‘become a law’ pursuant to the procedures designed by the Framers or Article I, Sec. 7, of the Constitution.

If there is to be a new procedure in which the President will play a different role in determining the final text of what may ‘become a law,’ such change must not come by legislation but through the amendment procedures set forth in Article V of the Constitution.” *Id.* at 4552.

In concurring with the result, Justice Kennedy wrote “the Constitution’s structure requires a stability which transcends the convenience of the moment.” *Id.* at 4552, Kennedy, J. concurring.

Likewise, whatever health and safety concerns the legislature might legitimately have about home-grown marijuana, the legislature cannot yield to the “convenience of the moment” and alter Article 13, Sec. 7, by a mere statute alone. Just as altering the veto provisions of the United States Constitution would require a constitutional amendment, so the wholesale exemption of crops from the protection of Article 13, Sec. 7, can take place only by amending that provision through the amendment process, contained in Article 9, Sec. 1 of the Minnesota Constitution.⁴

II. THE CURRENT LEGISLATIVE SCHEME REGULATING THE SALE OF MARIJUANA IS ONE OF LICENSURE, AND NOT COMPLETE PROHIBITION.

Again, with respect to the notion that the overall legislative scheme in Minnesota is one of licensure of marijuana sales, rather than absolute prohibition, Respondent’s brief is more interesting for what it fails to say than it is for what it says.

First of all, Respondent does not dispute that if the legislature had the ability to adopt a

⁴Article 9, Sec. 1 of the Minnesota Constitution requires that both houses of the legislature propose constitutional amendments by a majority of the members elected and that the amendment be ratified at a general election by a majority of the those voting. Plainly, the amendment process would provoke a long-needed public debate about the wisdom and propriety of marijuana prohibition in the State of Minnesota.

wholesale ban on individual crops, notwithstanding Article 13, Sec. 7, such as outlawing corn, eggs, milk, etc., it would make the prohibition of a licensure requirement meaningless. If Article 13, Sec. 7 means that the legislature is barred from the lesser included statute of requiring a license for the sale of home-grown farm products then it certainly must lack the greater power to prohibit those sales absolutely.

Secondly, Respondent does not dispute that under Minn. Stat. Sec. 297D.06, marijuana possessed by pharmacists licensed under Chapter 151 is specifically exempt from controlled substance tax, and under Sec. 151.25, pharmacists who possess drugs are licensed by this state. Finally, Respondent does not dispute the fact that under Sec. 152.21, persons distributing marijuana to investigate its clinical usage are specifically licensed by the state.

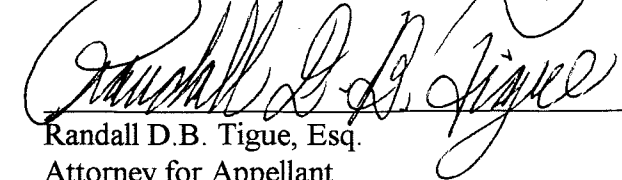
What Respondent does do is advance some convoluted arguments relating to zoning and forfeiture, none of which have any applicability to the issue of licensure. Respondent asserts, "There is no lawful commerce in marijuana the state seeks to tax or license." Respondent's brief at p. 16.

This is plainly untrue. Possession by licensed pharmacist for medical purposes is plainly permitted, as is possession for the purpose of conducting research into marijuana's therapeutic properties. What is therefore prohibited is not the possession of marijuana per se, but rather its only possession without the requisite license, a prohibition directly within the ambit of Article 13, Sec. 7.

CONCLUSION

For all of the foregoing reasons, the relief sought in Appellant's original brief should be, in all respects, granted.

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Dated: August 24, 1998

UNITED STATES DEPARTMENT OF JUSTICE
Drug Enforcement Administration

In The Matter Of
MARIJUANA RESCHEDULING PETITION

Docket No. 86-22

OPINION AND RECOMMENDED RULING, FINDINGS OF
FACT, CONCLUSIONS OF LAW AND DECISION OF
ADMINISTRATIVE LAW JUDGE

FRANCIS L. YOUNG, Administrative Law Judge

DATED: SEP 6 1988

A.1

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CERTIFICATION OF SERVICE

This is to certify that the undersigned on **SEP 6 1988**, caused a copy of the foregoing to be delivered to

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A. 72

State of Minnesota
In Court of Appeals

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Respondent,

vs.

LUCILLE I. BITZAN and PATRICK J. BITZAN,

Respondents,

and

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